

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

February 6, 2014

Contacts: Vincent Aldridge, Legislative and Cabinet
Services Director, (850) 617-8324
MaryAnn Murphy, Executive Asst. II
(850) 717-7138

9:00 A.M.
Florida State Fairgrounds
Tampa, Florida

ITEM	SUBJECT	RECOMMENDATION
1.	Respectfully request approval of the minutes of the November 19, 2013, and December 10, 2013 meetings. (ATTACHMENT 1)	RECOMMEND APPROVAL
2.	Respectfully request adoption of and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes, the following rules: Research and Development Tax Credit: Implement and formalize the process and procedure by which a taxpayer may apply for a corporate income tax credit for qualifying research and development expenses in Florida pursuant to section 220.196, F.S. [Proposed Rule 12C-1.0196 (Research and Development Tax Credit), and Rule 12C-1.051, F.A.C. (Forms)] (ATTACHMENT 2)	RECOMMEND APPROVAL
3.	Respectfully request adoption of and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes, the following rules: Time Payment Agreements: Update procedures used to enter into time payment agreements with taxpayers to resolve outstanding tax liability. [Rule Chapter 12-17,F.A.C.] Tax Warrants and Post-Warrant Collections: Update procedures authorized by law to issue tax warrants and liens for delinquent taxes and to use other post-	

warrant methods authorized by law when other methods to collect delinquent taxes are unsuccessful. [Rule Chapter 12-21 and Rule 12A-1.090, F.A.C.]

(ATTACHMENT 3)

RECOMMEND APPROVAL

ATTACHMENT 1

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STATE OF FLORIDA

IN RE: MEETING OF THE GOVERNOR AND
CABINET

_____ /

CABINET MEMBERS: GOVERNOR RICK SCOTT
ATTORNEY GENERAL PAM BONDI
CHIEF FINANCIAL OFFICER JEFF
ATWATER
COMMISSIONER OF AGRICULTURE
ADAM PUTNAM

DATE: TUESDAY, NOVEMBER 19, 2013

LOCATION: CABINET MEETING ROOM
LOWER LEVEL, THE CAPITOL
TALLAHASSEE, FLORIDA

REPORTED BY: NANCY S. METZKE, RPR, FPR
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DEPARTMENT OF REVENUE

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3 GOVERNOR SCOTT: Now I'd like to recognize
4 Marshall Stranburg, Executive Director of the
5 Department of Revenue.

6 Good morning, Marshall.

7 EXECUTIVE DIRECTOR STRANBURG: Good morning,
8 Governor, General Bondi, CFO Atwater, and
9 Commissioner Putnam.

10 The first item on our agenda today is to
11 respectfully request approval of the minutes of the
12 September 24th, 2013, meeting.

13 GOVERNOR SCOTT: Is there a motion to approve?

14 ATTORNEY GENERAL BONDI: So moved.

15 GOVERNOR SCOTT: Is there a second?

16 CFO ATWATER: Second.

17 GOVERNOR SCOTT: Moved and seconded. Show the
18 minutes approved without objection.

19 EXECUTIVE DIRECTOR STRANBURG: Thank you.

20 Our second item is requesting approval of the
21 Department's legislative budget request. We have
22 13 items in our budget request this year. Four of
23 these items are requests for spending authority;
24 they are not requests for any funding. Four others
25 of our requests relate to the relocation of our

1 service centers from private leased space to
2 state-owned space.

3 We're also requesting recurrent funding and
4 spending authority related to the One-Stop Business
5 Registration portal; we're also requesting funding
6 to replace an aging cargo van and forklift; we're
7 also requesting funding to contract with a managed
8 security service provider to protect the
9 Department's information technology system from
10 threats; and last but not least, we're requesting
11 recurrent funding to cover cost increases in our
12 annual contract with the Attorney General's Office
13 for our legal services related to the
14 administration of state revenues.

15 GOVERNOR SCOTT: All right. Is there a motion
16 to accept the legislative budget request?

17 CFO ATWATER: So move.

18 GOVERNOR SCOTT: Is there a second?

19 COMMISSIONER PUTNAM: Second.

20 GOVERNOR SCOTT: Florida law requires the
21 Governor to independently submit budget proposals.
22 Accordingly, I am abstaining from the vote on this
23 item. The record should reflect my abstention.

24 Any objections to accepting the legislative
25 budget request?

1 (NO RESPONSE) .

2 GOVERNOR SCOTT: Hearing none, the motion is
3 approved with one abstention.

4 EXECUTIVE DIRECTOR STRANBURG: Thank you.

5 Our third item is requesting approval of the
6 Department's legislative concepts for the upcoming
7 legislative session. This year we have 11
8 concepts, eight of them were concepts that we have
9 carried over from last year.

10 As most of you know, the bill that contained
11 our concepts did not pass last year. It had
12 nothing to do with our concepts but had some other
13 provisions that were added on to the bill that
14 caused it not to pass late in session.

15 Let me briefly talk about the three issues
16 that are new this year. The first one is a concept
17 that relates to the confidentiality of data
18 security systems. It's clear in law right now that
19 things such as internal security policies and
20 procedures, audit and risk analysis related to data
21 security, are exempt from public records
22 requirements; however, it's not as clear that
23 information related to the detection,
24 investigation, and response to data security
25 incidents or breaches would be exempt from public

1 records disclosure. This concept would make it
2 clear in statute that such information is exempt
3 from disclosure.

4 Our second new concept relates to reemployment
5 tax. It would make consistent certain timeframes
6 for protest rights.

7 Our third concept relates to property tax. A
8 part of our charge related to property tax is to
9 review and approve tax rolls prepared by the 67
10 property appraisers. Generally speaking, property
11 appraisers are required to assess properties at
12 just or fair market value; however, there are
13 certain types of properties that are classified by
14 general law to be based upon their usage. We
15 characterize these as classified-use properties.
16 The most common of these properties are
17 agricultural properties. Another example is land
18 use for conservation purposes.

19 Under current law, those properties that are
20 classified-use properties, the Department is
21 required to study the level of assessment in
22 counties where those properties exceed five percent
23 of the total value of properties in the county.
24 Currently right now there are only 22 counties
25 though where this requirement comes into play.

1 What our concept would like to do is to remove
2 this requirement from the statutes and instead use
3 authority that we already have to do what are
4 known as procedural reviews or procedural audits
5 of these classified-use determinations by the
6 property appraisers in all 67 counties. We
7 believe this would promote greater uniformity,
8 fairness, and equity in these assessments than the
9 current methodology where we're only looking at 22
10 counties with respect to the classified-use
11 determinations.

12 Three concepts that as I mentioned are the
13 concepts that we had again last year. Briefly,
14 these relate to things such as the adoption of the
15 corporate income tax piggyback. The proposal we
16 had last year where we are trying to better put in
17 statute some criminal penalties. We're not adding
18 or changing any criminal penalties but moving them
19 to more logical places in the statute and
20 eliminating some confusion.

21 We're also bringing back our request to allow
22 us to have delinquent taxpayers who have
23 liabilities that are owed to the state who are now
24 seeking to get a registration for a new entity, a
25 new corporation or legal structure, that we could

1 require them to post a bond in order to be
2 registered with the Department of Revenue. We are
3 conforming one outlier in the interest rates on
4 delinquent taxes; that is, the reemployment
5 assistance tax. That would go to a floating rate
6 of interest rather than 12 percent per year.

7 We also are asking to, again, go forward with
8 the concept that would allow us to take employers
9 who are failing to respond to record requests and
10 audits to the standard rate of reemployment tax.
11 That would roll back once they do comply with our
12 request to provide records.

13 We wanted to criminalize the purchase, sale,
14 and installation of Zappers, a concept where people
15 put software into their records that allow them to
16 keep a duplicate set of books and records that
17 would not reflect fully their activities. We
18 wanted to clean up a concept relating to when
19 clerks of the court send -- remit monies to the
20 Department of Revenue.

21 And lastly, a concept to increase our
22 compromised authority from \$250,000 to \$500,000
23 where there's doubt as to liability or doubt as to
24 collectability.

25 So those are our proposed concepts. I'd be

1 glad to answer any questions that any of the
2 members might have about those concepts.

3 COMMISSIONER PUTNAM: Governor.

4 GOVERNOR SCOTT: Yes, sir.

5 COMMISSIONER PUTNAM: On your classified-use
6 proposal, why is the law the way that it is now
7 where you are reviewing only those counties that
8 have a classification that exceeds five percent?
9 What was the rationale for that?

10 EXECUTIVE DIRECTOR STRANBURG: Commissioner, I
11 don't know the rationale for that. That's been
12 something that's been in statute for a number of
13 years. I can only guess as to what that would be,
14 and I don't know. We can follow-up and see if we
15 can determine why the legislature put that
16 determination in statute, but that's the way --
17 it's been in there for a number of years.

18 COMMISSIONER PUTNAM: Well, you said you
19 wanted to change it to bring more consistency
20 and uniformity. Who is inconsistent, the 22
21 who currently get the extra review or the
22 remainder?

23 EXECUTIVE DIRECTOR STRANBURG: I think the
24 concern is those other 45 counties, that we are not
25 doing that review of their classified-use

1 properties on a regular basis; that now we would be
2 giving this procedural review to make sure that
3 property appraisers have a procedure in place for
4 determining whether a property qualifies for a
5 classified use; that they are following those
6 guidelines that they have in there; that they're
7 retaining information to support the determination
8 that a piece of property met the classified-use
9 determination.

10 What we're looking again to see is to make
11 sure that we can look at those other counties in
12 some way to determine that, yes, properties that
13 are entitled to that classification are getting it;
14 properties that are not entitled to it, do not
15 qualify for it, to get the benefit of those
16 classified uses.

17 COMMISSIONER PUTNAM: So right now it's
18 predominantly -- well, it's not predominantly. It
19 is exclusively the most rural counties, that are
20 the most agricultural that are getting your
21 additional review now?

22 EXECUTIVE DIRECTOR STRANBURG: Yes, that is
23 correct. It is mainly smaller counties that have a
24 significant agricultural -- a larger county that
25 also has a significant agricultural presence in it,

1 if they have though other areas such as residential
2 property and commercial property that are at a high
3 level, even though there may be a substantial
4 amount of agricultural property in that county,
5 because it does not get to that five-percent
6 threshold, we would not be looking at those.

7 You know, let me point out too, just as part
8 of the explanation, what happens when you have
9 these classified-use properties is they're not put
10 on the tax rolls at just value. They're put on --
11 the tax rolls basically use through a valuation
12 method that looks at the income that's generated
13 from them.

14 I think as you're quite aware, if you look at
15 a piece of agricultural property and it's being
16 used for that purpose, that value is going to be
17 significantly different from if you looked at its
18 highest and best value, which might be putting --
19 you know, subdividing it and putting homes on it.
20 So if it was looked at and put on the tax rolls at
21 that, it would be a definite disadvantage to our
22 agricultural interest in Florida because they would
23 have an increased property tax if we were valuing
24 it on that best and highest use valuation in
25 determining just value rather than looking at it as

1 a classified-use property.

2 COMMISSIONER PUTNAM: So where are the
3 property appraisers on this?

4 EXECUTIVE DIRECTOR STRANBURG: When we sent
5 this concept out for any comments, we did not get
6 any feedback from them indicating that they had a
7 problem with it. The informal feedback I've
8 heard from our people is property appraisers do
9 not have a problem with this. We are doing these
10 kinds of procedural reviews in other areas, so this
11 would not be something that would be a new
12 procedure that we would be asking them to work with
13 us with.

14 COMMISSIONER PUTNAM: Let's stay in touch on
15 this.

16 EXECUTIVE DIRECTOR STRANBURG: Yeah, be glad
17 to.

18 GOVERNOR SCOTT: Are there any other
19 questions?

20 (NO RESPONSE).

21 EXECUTIVE DIRECTOR STRANBURG: I believe we
22 had one member of the public who was interested in
23 coming up and making some comments upon the current
24 legislative concepts on the agenda today.

25 GOVERNOR SCOTT: Anybody here?

1 (NO RESPONSE) .

2 EXECUTIVE DIRECTOR STRANBURG: But I guess she
3 is not here then, so --

4 GOVERNOR SCOTT: Is there a motion to accept
5 the legislative proposals?

6 CFO ATWATER: So move.

7 GOVERNOR SCOTT: Is there a second?

8 ATTORNEY GENERAL BONDI: Second.

9 GOVERNOR SCOTT: Florida law requires the
10 Governor to independently review legislation upon
11 passage. Accordingly, I am abstaining from the
12 vote on this item. The record should reflect my
13 abstention.

14 Any objections to accepting the legislative
15 proposals?

16 (NO RESPONSE) .

17 GOVERNOR SCOTT: Hearing none, the motion is
18 approved with one abstention.

19 Thank you, Marshall.

20 EXECUTIVE DIRECTOR STRANBURG: Thank you.

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STATE OF FLORIDA

IN RE: MEETING OF THE GOVERNOR AND
CABINET

_____ /

CABINET MEMBERS: GOVERNOR RICK SCOTT
ATTORNEY GENERAL PAM BONDI
CHIEF FINANCIAL OFFICER JEFF
ATWATER
COMMISSIONER OF AGRICULTURE
ADAM PUTNAM

DATE: TUESDAY, DECEMBER 10, 2013

LOCATION: CABINET MEETING ROOM
LOWER LEVEL, THE CAPITOL
TALLAHASSEE, FLORIDA

REPORTED BY: NANCY S. METZKE, RPR, FPR
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DEPARTMENT OF REVENUE

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3 GOVERNOR SCOTT: Next I'd like to recognize
4 Marshall Stranburg, Executive Director of the
5 Department of Revenue, to present his agenda.

6 Good morning, Marshall.

7 EXECUTIVE DIRECTOR STRANBURG: Good morning,
8 Governor Scott, General Bondi, Commissioner Putnam,
9 and CFO Atwater.

10 Our first agenda item this morning is we
11 respectfully request approval and adoption to file
12 and certify with the Secretary of State under
13 Chapter 120 rules relating to general tax
14 administration. These proposed rule amendments
15 reflect 2013 law changes, update forms, and remove
16 obsolete provisions.

17 GOVERNOR SCOTT: Is there a motion to approve?

18 ATTORNEY GENERAL BONDI: So move.

19 GOVERNOR SCOTT: Is there a second?

20 CFO ATWATER: Second.

21 GOVERNOR SCOTT: Any comments or objections?

22 (NO RESPONSE).

23 GOVERNOR SCOTT: Hearing none, the motion
24 carries.

25 EXECUTIVE DIRECTOR STRANBURG: Thank you.

1 We respectfully request withdrawal of Agenda
2 Item Number 2.

3 GOVERNOR SCOTT: Is there a motion to
4 withdraw?

5 COMMISSIONER PUTNAM: So moved.

6 GOVERNOR SCOTT: Is there a second?

7 ATTORNEY GENERAL BONDI: Second.

8 GOVERNOR SCOTT: Any comments or objections?

9 (NO RESPONSE).

10 GOVERNOR SCOTT: Hearing none, the motion
11 carries.

12 EXECUTIVE DIRECTOR STRANBURG: Thank you.

13 And our third and final item, we respectfully
14 request approval and authority to publish notice of
15 proposed rule in the Florida Administrative
16 Register for rules concerning the research and
17 development tax credit.

18 GOVERNOR SCOTT: Is there a motion to approve?

19 COMMISSIONER PUTNAM: So moved.

20 GOVERNOR SCOTT: Is there a second?

21 ATTORNEY GENERAL BONDI: Second.

22 GOVERNOR SCOTT: Any comments or objections?

23 (NO RESPONSE).

24 GOVERNOR SCOTT: Hearing none, the motion
25 carries.

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EXECUTIVE DIRECTOR STRANBURG: Great. Thank
you very much.

GOVERNOR SCOTT: Thank you, Marshall.

* * * *

ATTACHMENT 2



Executive
Director
Marshall Stranburg

January 24, 2014

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Michael Sevi, Director of Cabinet Affairs
Karl Rasmussen, Deputy Director of Cabinet Affairs
Jacob Horner, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Director of Cabinet Affairs
Erica Atalla, Senior Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Director of Legislative and Cabinet Affairs
Erin Sumpter, Deputy Director of Cabinet Affairs
Andrew Fay, Deputy Director of Legislative Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Brooke McKnight, Director of Cabinet Affairs
Jessica Field, Deputy Cabinet Affairs Director

THRU: Marshall Stranburg, Executive Director

FROM: Vince Aldridge, Director, Legislative and Cabinet Services

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

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

The Department has reviewed the proposed rules for compliance with Sections 120.54(3)(b) and 120.541, F.S. The proposed rules will not likely have an adverse impact on small business, small counties, or small cities, and they are not likely to have an increased regulatory cost in excess of \$200,000 within 1 year. Additionally, the proposed rules are 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 12C-1.096, F.A.C. (*Research and Development Tax Credit*) and Rule 12C-1.051, F.A.C.

(Forms), and approval to file and certify them with the Secretary of State under Chapter 120, F.S.

Why are the proposed rules necessary? Section 220.196, F.S., provides a credit against corporate income tax for target industry businesses that have qualified research expenses. The total available to all businesses is capped at \$9 million annually and is available on a first-come basis determined by the date that completed applications are received by the Department. Applications may be filed with the Department on or after March 20 of each year. The proposed changes are necessary to assist taxpayers in applying for the credit and taking the credit on their corporate income tax returns.

What do the proposed rules do? The rules provide the application to be used by taxpayers to apply for the credit, set out the qualifications for the credit, and explain how to take the credit on the appropriate tax return.

Were comments received from external parties? No. A rule development workshop was scheduled for October 1, 2013, to be held if requested in writing. No request to hold the workshop and no written comments on the proposed rules was received.

On December 10, 2013, the Governor and Cabinet approved the Department's request to publish a Notice of Proposed Rule and to conduct a rule hearing. The rule hearing was scheduled for January 14, 2014, to be held if requested in writing. No request to hold the workshop and no written comments on the proposed rules was received.

Attached are copies of:

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

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
CREATING RULE 12C-1.0196
AMENDING RULE 12C-1.051

SUMMARY OF PROPOSED RULE

The proposed creation of Rule 12C-1.0196, F.A.C. (Research and Development Tax Credit), provides: (1) the tax credit is available annually for tax years beginning on or after January 1, 2012; (2) that a target industry business must file an application with the Department annually to receive an allocation of the annual funds available for the tax credit; (3) that the Florida corporate income/franchise tax credit must be taken in the same tax year as the federal credit for increasing research activities is taken; (4) that a business taking the tax credit must provide a copy of the federal forms regarding the related federal tax credit with the business' Florida corporate income/franchise tax return; (5) how to calculate the Florida tax credit and examples of the calculations; (6) that the credit is limited to fifty percent of the Florida corporate income/franchise tax liability after all other tax credits are applied; (7) that any unused credit may be carried forward up to five tax years; and (8) the recordkeeping requirements for those businesses taking the tax credit.

The proposed amendments to Rule 12C-1.051, F.A.C. (Forms), adopt, by reference, the application for target industry businesses to apply for an Allocation for Research and Development Tax Credit for Corporate Income/Franchise Tax (Form F-1196).

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Section 17, Chapter 2011-76, Laws of Florida, provides for the administration of the Florida research and development tax credit available to target industry businesses that claim and are allowed a federal credit under section 41 of the Internal Revenue Code for tax years beginning on or after January 1, 2012, as provided in section 220.196, F.S. The purpose of the proposed creation of Rule 12C-1.0196, F.A.C. (Research and Development Tax Credit), is to adopt procedures for a target industry business that claims a valid tax credit against federal corporate income tax for qualified research expenses to claim a Florida research and development tax credit against Florida corporate income/franchise tax, as provided in Section 220.196, F.S.

The purpose of the proposed amendments to Rule 12C-1.051, F.A.C. (Forms), is to adopt, by reference, the application for target industry businesses to apply for an Allocation for Research and Development Tax Credit for Corporate Income/Franchise Tax (Form F-1196).

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

OCTOBER 1, 2013

A Notice of Proposed Rule Development was published in the Florida Administrative Register on September 6, 2013 (Vol. 39, No. 174, pp. 4487 - 4488), to advise the public of the proposed creation of Rule 12C-1.0196, F.A.C. (Research and Development Tax Credit), and the

amendments to Rule 12C-1.051, F.A.C. (Forms), and to provide that, if requested in writing, a rule development workshop would be held on October 1, 2013. No request was received by the Department. No written comments were received by the Department.

SUMMARY OF PUBLIC HEARING

HELD ON DECEMBER 10, 2013

The Governor and Cabinet, sitting as head of the Department of Revenue, met on December 10, 2013, and approved the publication of the Notice of Proposed Rule for creation of Rule 12C-1.0196, F.A.C. (Research and Development Tax Credit), and the amendments to Rule 12C-1.051, F.A.C. (Forms). A notice for the public hearing was published in the Florida Administrative Register on November 27, 2013 (Vol. 39, No. 231, pp. 5938 - 5939).

SUMMARY OF RULE HEARING

JANUARY 14, 2014

A Notice of Proposed Rule published in the Florida Administrative Register on December 20, 2013 (Vol. 39, No. 246, pp. 6323 - 6326), to advise the public of the proposed creation of Rule 12C-1.0196, F.A.C. (Research and Development Tax Credit), and the amendments to Rule 12C-1.051, F.A.C. (Forms), and to provide that, if requested in writing, a rule hearing would be held on January 14, 2014. No request was received by the Department. No written comments were received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
CREATING RULE 12C-1.0196
AMENDING RULE 12C-1.051

12C-1.0196 Research and Development Tax Credit.

(1)(a)1. A research and development tax credit against Florida corporate income/franchise tax is provided in Section 220.196, F.S., to a target industry business that claims a valid research credit against federal corporate income tax for qualified research expenses as provided in section 41 of the Internal Revenue Code (26 U.S.C. s. 41). The target business enterprise must be a corporation, as defined in Section 220.03, F.S., and a target industry business, as defined in Section 288.106, F.S.

2. If the related federal corporate income tax credit for increasing research activities is not extended for a tax year, a target industry business will not be permitted to take the Florida research and development tax credit.

(b) “Qualified research expenses” include research expenses qualifying for the credit under section 41 of the Internal Revenue Code (26 U.S.C. s. 41) for in-house research expenses incurred in Florida or contract research expenses incurred in Florida. The term “qualified research expenses” does not include research conducted outside Florida or research expenses that do not qualify for a credit under 26 U.S.C. s. 41.

(c)1. The credit is available annually for tax years beginning on or after January 1, 2012.

and is based upon qualified research expenses in Florida allowed under section 41 of the Internal Revenue Code (26 U.S.C. s. 41).

2. Example: Tax credit applications approved for the 2012 calendar year were based upon qualified research expenses incurred during calendar year 2012 for tax years that began in 2012.

(2)(a) To receive an annual allocation of the annual funds available for granting tax credits to target industry businesses, an Allocation for Research and Development Tax Credit for Florida Corporate Income/Franchise Tax (Form F-1196, incorporated by reference in Rule 12C-1.051, F.A.C.) must be filed with the Department on or after March 20 of each year and on or before December 31 of that same year. The application is available on the Department's website at www.myflorida.com/dor/. Taxpayers required to file returns and remit payments by electronic means pursuant to Section 213.755, F.S., and Rule Chapter 12-24, F.A.C., must apply online using the Department's website. When the completed application is submitted online, a confirmation number will be provided to confirm receipt of the application.

(b) Businesses needing assistance with the Allocation for Research and Development Tax Credit for Florida Corporate Income/Franchise Tax may call the Department at (800) 352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time. Persons with hearing or speech impairments may call the Florida Relay Service at (800) 955-8770 (Voice) and (800) 955-8771 (TTY).

(c) Applications filed with the Department on or after March 20 of each year will be accepted by the Department until December 31 of that year, or until the annual appropriation has been completely allocated, whichever occurs first. Credits will be allocated by the Department in the order in which completed applications are received. Beginning April 1 of each year, the Department will notify eligible taxpayers by letter of the amount of credit that is allocated to

them and the tax year in which the target industry business may claim the credit on its Florida corporate income/franchise tax return.

(3) A corporation that has received a research credit against federal corporate income tax solely by virtue of its membership in a partnership that has earned a federal credit for increasing research activities may apply for the Florida research and development tax credit. For purposes of 26 U.S.C. s. 41, the research expenses are apportioned among the partners during the taxable year and are treated as paid or incurred directly by the partners rather than by the partnership.

(4) A federal research credit must be taken on the federal return filed by the target industry business for the same tax year in which the Florida research and development credit is taken. The amount taken as a Florida research and development credit must be added to taxable income prior to computing the Florida corporate income/franchise tax due. The Florida research and development credit is limited to fifty percent (50%) of the Florida corporate income/franchise tax liability after all other credits are applied in the order provided in Section 220.02(8), F.S. A copy of federal Form 6765 (Credit for Increasing Research Activities) and a copy of federal Form 3800 (General Business Credit) must be attached to the Florida corporate income/franchise tax return on which the Florida research and development credit is taken. In the case of a corporate partner of a partnership that has earned a federal credit for increasing research activities, a copy of federal Form 1065, Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.), and a copy of federal Form 3800 must be attached to the Florida corporate income/franchise tax return on which the Florida research and development credit is taken.

(5)(a) Any unused credits may be carried forward for up to five (5) tax years. Carryover credits may be used in a subsequent year when the Florida corporate income/franchise tax for such year exceeds the credit for such year after applying the other credits and unused carryovers

in the order provided in Section 220.02(8), F.S. A taxpayer may not transfer or sell its credit or its right to apply for a credit to another taxpayer.

(b) Example: A taxpayer is allocated a Florida research and development credit of \$30,000 for its tax year beginning in 2012 and all requirements of Section 220.196, F.S., are met for the taxpayer to earn the full \$30,000 allocation. Its Florida corporate income/franchise tax liability after all other applicable credits are applied is \$50,000. The \$30,000 Florida research and development credit that the taxpayer is allocated for tax year 2012 is more than 50 percent of its tax liability for tax year 2012. Therefore, the taxpayer is limited to a Florida research and development credit of \$25,000 ($\$50,000 \times .50$) for tax year 2012, and the remaining \$5,000 of Florida research and development credit may be carried forward for up to five tax years.

(6)(a)1. The Florida research and development tax credit is equal to ten percent (10%) of the amount of qualified research expenses incurred in Florida and allowed under section 41 of the Internal Revenue Code (26 U.S.C. s. 41) that exceeds the base amount. The base amount is defined as “the average of the qualified research expenses incurred in Florida for the four tax years preceding the tax year for which the credit is determined.” The four taxable years used to compute the base amount must end before the calendar year for which the qualified research expenses are determined.

2. Example: A taxpayer with a fiscal year end of June 30, 2013, that applies for the Florida research and development credit based upon the qualified research expenses incurred during calendar year 2012 will use the following taxable years for its base amount: taxable years ended June 30, 2011; June 30, 2010; June 30, 2009; and June 30, 2008.

(b)1. Target industry businesses that have not been in existence for at least four tax years prior to the tax year in which the Florida research and development credit is claimed must reduce

the amount of the credit by twenty-five percent (25%) for each year of the past four tax years that the corporation did not exist.

2. Example: A calendar year taxpayer is incorporated on January 1, 2009. The taxpayer applies for the Florida research and development credit for its tax year beginning January 1, 2012; its Florida qualified research expenses for calendar year 2012 equal \$250,000. The taxpayer's Florida qualified research expenses for its base amount are as follows:

Tax year 2008: \$0, as Taxpayer did not exist.

Tax year 2009: \$175,000

Tax year 2010: \$200,000

Tax year 2011: \$225,000

The average of the Florida qualified research expenses for the 4 taxable years preceding 2012 equals \$150,000 $((\$0 + \$175,000 + \$200,000 + \$225,000) \div 4)$. The excess Florida qualified research expenses over the base amount equal \$100,000 $(\$250,000 - \$150,000)$. The tentative Florida research and development credit is \$10,000 $(\$100,000 \times .10)$. However, since the taxpayer was not in existence for at least 4 taxable years immediately preceding tax year 2012, the Florida research and development credit is reduced by 25 percent for each taxable year the taxpayer did not exist. Therefore, the taxpayer's Florida research and development credit for tax year 2012 is reduced by 25 percent to \$7,500 $(\$10,000 - \$2,500)$.

(7) Every taxpayer claiming a Florida research and development credit must retain documentation that substantiates and supports the credit, a copy of the letter received from the Department granting the credit, and a schedule reconciling all credit carryovers until tax imposed by Chapter 220, F.S., may no longer be determined and assessed under Section 95.091(3), F.S., or under Section 220.23, F.S. Documentation to substantiate and support the credit includes

records or other evidence of the amount of qualified Florida research expenses incurred for in-house research or for contract research expenses, that those expenses qualified under 26 U.S.C. s. 41, and that the federal credit was claimed.

Rulemaking Authority 213.06(1), 220.196(4), 220.51 FS. Law Implemented 220.196 FS.

History—New _____.

12C-1.051 Forms.

(1)(a) The following forms and instructions are used by the Department in its administration of the corporate income tax and franchise tax. These forms are hereby incorporated by reference in this rule.

(b) No change.

Form Number	Title	Effective Date
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(2) through (11) No change.

<u>(12) F-1196</u>	<u>Allocation for Research and Development Tax Credit for Florida Corporate Income/Franchise Tax (R. 03/14)</u>	_____
	<u>(http://www.flrules.org/Gateway/reference.asp?No=Ref-_____)</u>	

(12) through (13) Renumber as (13) through (14) No change.

Rulemaking Authority 213.06(1), 220.192(7), 220.193(4), 220.196(4), 220.51, 1002.395(13) FS.

Law Implemented 119.071(5), 212.08(5)(p), 213.755(1), 220.11, 220.12, 220.13(1), (2), 220.14, 220.15, 220.16, 220.181, 220.182, 220.183, 220.184, 220.1845, 220.185, 220.186, 220.1875, 220.1895, 220.1896, 220.1899, 220.19, 220.191, 220.192, 220.193, 220.194, 220.195, 220.196, 220.21, 220.211, 220.22, 220.221, 220.222, 220.23, 220.24, 220.241, 220.31, 220.32, 220.33, 220.34, 220.41, 220.42, 220.43, 220.44, 220.51, 220.721, 220.723, 220.725, 220.737, 220.801,

220.803, 220.805, 220.807, 220.809, 221.04, 624.5105, 624.51055, 1002.395 FS. History–New
9-26-77, Amended 12-18-83, Formerly 12C-1.51, Amended 12-21-88, 12-31-89, 1-31-91, 4-8-
92, 12-7-92, 1-3-96, 3-18-96, 3-13-00, 6-19-01, 8-1-02, 6-19-03, 3-15-04, 9-24-04, 6-28-05, 5-1-
06, 4-5-07, 1-1-08, 1-27-09, 1-11-10, 4-26-10(12)(a),(b), 4-26-10(13)(a),(b), 6-28-10, 1-12-11, 6-
6-11, 1-25-12, 1-17-13,_____.

ATTACHMENT 3



Executive
Director
Marshall Stranburg

January 24, 2014

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Michael Sevi, Director of Cabinet Affairs
Karl Rasmussen, Deputy Director of Cabinet Affairs
Jacob Horner, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Director of Cabinet Affairs
Erica Atalla, Senior Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Director of Legislative and Cabinet Affairs
Erin Sumpter, Deputy Director of Cabinet Affairs
Andrew Fay, Deputy Director of Legislative Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Brooke McKnight, Director of Cabinet Affairs
Jessica Field, Deputy Cabinet Affairs Director

THRU: Marshall Stranburg, Executive Director

FROM: Vince Aldridge, Director, Legislative and Cabinet Services

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

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

The Department has reviewed the proposed rules for compliance with Sections 120.54(3)(b) and 120.541, F.S. The proposed rules will not likely have an adverse impact on small business, small counties, or small cities, and they are not likely to have an increased regulatory cost in excess of \$200,000 within 1 year. Additionally, the proposed rules are 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 the following proposed rules and approval to file and certify them with the Secretary of State under Chapter 120, F.S.:

- Agreements for Scheduling Payment of Outstanding Tax Liabilities *(Rule Chapter 12-17, F.A.C.)*
- Tax Warrants and Post-Warrant Collections *(Rule Chapter 12-21, F.A.C., and Rule 12A-1.090, F.A.C.)*

Agreements for Scheduling Payment of Outstanding Tax Liabilities

Why are the proposed rules necessary? Section 213.21, F.S., authorizes the Department to enter into stipulated time payment agreements with taxpayers. The statute also requires the Department to establish guidelines and procedures by rule. This rulemaking updates and clarifies the procedures for stipulated time payment agreements.

What do the proposed rules do? This rule chapter, as revised, contains the procedures used by the Department to enter into stipulated time payment agreements with taxpayers to resolve their outstanding tax liabilities.

Were comments received from external parties? No.

A rule development workshop was scheduled for September 20, 2012, to be held if requested in writing. No request to hold the workshop and no written comments were received by the Department.

On September 24, 2013, the Governor and Cabinet approved the Department's request to publish a Notice of Proposed Rule and to conduct a rule hearing. A rule hearing was held November 13, 2013. No public participants were in attendance. No comments were received by the Department.

Tax Warrants and Post-Warrant Collections

Why are the proposed rules necessary? When efforts to collect delinquent taxes, fees, or surcharges are unsuccessful, Florida Statutes authorize the Department to issue a tax warrant and to file a judgment lien for the delinquent taxes, fees, or surcharges. When these collection methods are unsuccessful, the statutes also allow the Department to utilize other post-warrant methods to collect the delinquent amounts. This rulemaking updates and clarifies the rule chapter that provides the procedures used by the Department to collect delinquent taxes, fees, or surcharges, and repeals a sales tax rule on the same subject that will no longer be necessary.

What do these proposed rules do? This rule chapter, as revised, contains the procedures used by the Department to issue tax warrants, to file judgment liens, and to utilize the post-warrant methods to collect delinquent taxes, fees, or surcharges.

Were comments received from external parties? No.

A rule development workshop was scheduled for September 20, 2012, to be held if requested in writing. No request to hold the workshop and no written comments were received by the Department.

On September 24, 2013, the Governor and Cabinet approved the Department's request to publish a Notice of Proposed Rule and to conduct a rule hearing. A rule hearing was held November 13, 2013. No public participants were in attendance. In response to comments received from the staff of the Joint Administrative Procedures Committee, a Notice of Change for proposed subsection (2) of Rule 12-21.208, F.A.C., was published in the December 5, 2013 (Vol. 39, No. 235, p. 6043), issue of the Florida Administrative Register.

Attached are copies of:

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

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12-17, FLORIDA ADMINISTRATIVE CODE

AGREEMENTS FOR SCHEDULING PAYMENT OF LIABILITIES

AMENDING RULES 12-17.001, 12-17.002, 12-17.003, 12-17.004, 12-17.005,

12-17.006, 12-17.007, 12-17.008, AND 12-17.009

REPEALING RULE 12-17.010

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12-17.001, F.A.C. (Scope of Rules), provide that rules regarding the scheduling of payments to resolve outstanding tax liabilities do not apply to certain agreements, orders, or settlement of circuit court proceedings.

The proposed amendments to Rule 12-17.002, F.A.C. (Definitions), Rule 17.003, F.A.C. (Requirements for Considering Entering into Stipulated Time Payment Agreements), and Rule 12-17.005, F.A.C. (Factors Considered by the Department), provide that outstanding liabilities for taxes administered, regulated, controlled, and collected by the Department, and for the reemployment tax collected by the Department, may be resolved through stipulated time payment agreements.

The proposed amendments to Rule 12-17.004, F.A.C. (Delegation of Authority), provide that: (1) the Executive Director of the Department is authorized to issue a delegation of authority to designate those positions authorized to enter into stipulated time payment agreements; and (2) any such delegations will be in writing, signed by the Executive Director, and maintained by the agency clerk in the Office of the General Counsel.

The proposed amendments to Rule 12-17.006, F.A.C. (Procedures), standardize the requirements for a taxpayer to request a stipulated time payment agreement from the Department.

The proposed amendments to Rule 12-17.007, F.A.C. (Form and Execution of Stipulated Time Payment Agreements): (1) remove provisions prescribing Form DR-68 as the form used for stipulated time payment agreements; (2) provide that modifications to an agreement must be in writing and executed by all parties; and (3) remove payment coupons that are no longer used by the Department.

The proposed amendments to Rule 12-17.008, F.A.C. (Terms of Stipulated Time Payment Agreements), provide: (1) that the amount of a down payment required to enter into a stipulated time payment agreement is based upon the amount of the outstanding liability and the taxpayer's ability to pay; (2) the notifications that will be included in a stipulated time payment agreement regarding actions the Department will take when an agreement is held in default; (3) that provisions relating to jeopardy assessments continue to apply during the term of an agreement; (4) that the taxpayer agrees to make the required payments by electronic means, unless a variance or waiver is granted by the Department; (5) that the taxpayer agrees to timely file all required tax returns and timely remit all taxes due during the term of the agreement; and (6) that additional liabilities identified will be assessed upon a taxpayer who has entered into a stipulated time payment agreement to resolve other outstanding tax liabilities.

The proposed amendments to Rule 12-17.009, F.A.C. (Agreements in Default): (1) provide that any outstanding liability that remains due when a taxpayer is held in default of the terms of a stipulated time payment agreement is immediately due and payable; and (2) remove the listing of collection actions authorized by statute for the Department to recover outstanding liabilities when an agreement is held in default.

The proposed repeal of Rule 12-17.010, F.A.C. (Public Use Forms), removes the unnecessary adoption of Form DR-68, Stipulated Time Payment Agreement, which does not meet the definition of a “rule” in Section 120.52(15), F.S.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

Section 213.21, F.S., requires the Department to establish rules and procedures for entering into stipulated time payment agreements with taxpayers to resolve their outstanding tax liabilities. The proposed amendments to Rule Chapter 12-17, F.A.C. (Agreements for Scheduling Payments of Liabilities), are necessary to update and standardize the procedures for taxpayers resolving their outstanding tax liabilities through stipulated time payment agreements. When in effect, the updated rule chapter establishes the requirements to enter into a stipulated time payment agreement and to remain in compliance with the terms of the agreement, and the actions that will be taken when a taxpayer is held in default of an agreement.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

SEPTEMBER 20, 2012

A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on August 31, 2012 (Vol. 38, No. 35, pp. 3559-3560), to advise the public of the proposed changes to Rule Chapter 12-17, F.A.C. (Agreements for Scheduling Payments of

Liabilities), and to provide that, if requested in writing, a rule development workshop would be held on September 20, 2012. No request was received by the Department. No written comments were received by the Department.

After further review of provisions regarding delegations of authority issued by the Executive Director of the Department, the proposed amendments to Rule 12-17.004, F.A.C. (Delegation of Authority) were revised to provide that the Executive Director of the Department is authorized to issue a delegation of authority to designate those positions authorized to enter into stipulated time payment agreements and that any such delegation will be in writing, signed by the Executive Director, and maintained by the agency clerk in the Office of the General Counsel.

SUMMARY OF PUBLIC HEARING

HELD ON SEPTEMBER 24, 2013

The Governor and Cabinet, sitting as head of the Department of Revenue, met on September 24, 2013, and approved the publication of the Notice of Proposed Rule for changes to Rule Chapter 12-17, F.A.C. (Agreements for Scheduling Payments of Liabilities). A notice for the public hearing was published in the Florida Administrative Register on September 13, 2013 (Vol. 39, No. 179, pp. 4604-4607).

SUMMARY OF RULE HEARING

NOVEMBER 13, 2013

The proposed amendments to Rule Chapter 12-17, F.A.C. (Agreements for Scheduling Payments of Liabilities), were noticed for a rule hearing in the Florida Administrative Register

on October 21, 2013 (Vol. 39, No. 205, pp. 5238-5245). A rule hearing was held on November 13, 2013, in Room 1220, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one from the public was in attendance. No written comments were received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-17, FLORIDA ADMINISTRATIVE CODE
AGREEMENTS FOR SCHEDULING PAYMENT OF LIABILITIES
AMENDING RULES 12-17.001, 12-17.002, 12-17.003, 12-17.004, 12-17.005,
12-17.006, 12-17.007, 12-17.008, AND 12-17.009
REPEALING RULE 12-17.010

12-17.001 Scope of Rules.

(1) The rules set forth in this chapter shall be used by the Department in exercising the authority granted by Section 213.21(4), F.S., to enter into agreements for scheduling payments of outstanding liabilities ~~taxes, interest, and penalties~~. These rules also implement the Taxpayer Bill of Rights statutory provision that guarantees every Florida taxpayer the right to procedures for retiring unpaid tax liabilities through stipulated time payment agreements that are based on the taxpayer's financial position and the best interests of the state.

(2) Except for the delegations of authority provided in Rule 12-17.004, F.A.C., the rules set forth in this chapter do not apply to any stipulated time payment agreement made a part of:

(a) Any closing agreement executed pursuant to Section 213.21(2)(a), F.S., and Rule 12-13.009, F.A.C.;

(b) Any compliance agreement entered into pursuant to Sections 212.18 or 213.692, F.S.;

(c) Any proceeding pursuant to Chapter 120, F.S.; or

(d) The settlement of any action filed by a taxpayer in circuit court, as provided in Section 72.011, F.S.

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 212.18, 213.015(10), 213.21(2)(a), (4), 213.24(3), 213.692 FS. History—New 10-4-89, Amended 4-29-03,_____.

12-17.002 Definitions.

(1) “Department” means the Florida Department of Revenue.

(2) “Taxpayer” means any person, as defined in Section 1.01, F.S., required to remit any tax, surtax, surcharge, or fee listed ~~interest, or penalty to the Department under any of the tax laws enumerated in Section 213.05~~ 72.011(1), F.S., that is administered, regulated, controlled, and collected by the Department, and any employing unit required to pay any contribution or reimbursement required under Chapter 443, F.S.

(3) “Stipulated time payment agreement” means a written agreement entered into by the Department and taxpayer which schedules payments of outstanding liabilities ~~a liability for tax, interest, or penalty~~ over a specified period of time.

~~(4) “Closing agreement” means a written agreement entered into by the Department and a taxpayer pursuant to Rule 12-13.009, F.A.C.~~

~~(4)(5)~~ “Collection action” means the issuance of a delinquent notice or billing, a tax warrant or notice of lien, or any other attempt to obtain payment of an unpaid amount. The term “collection action” does not include an attempt by an auditor to collect an assessment arising from the performance of an audit by such auditor.

(5) “Outstanding liabilities” means any unpaid taxes, surtaxes, surcharges, or fees listed in Section 213.05, F.S., that are administered, regulated, controlled, and collected by the Department, or any unpaid contributions or reimbursements required under Chapter 443, F.S. Outstanding liabilities also include any associated penalties, interest, fees, or collection costs.

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21(4), 213.24(3), 213.69, 443.1316 FS. History–New 10-4-89, Amended 4-29-03, _____.

12-17.003 Requirements for Considering Entering into Stipulated Time Payment Agreements.

(1) A taxpayer requesting a stipulated time payment agreement must first:

(a) Acknowledge the taxpayer's outstanding liabilities ~~liability for the total amount of tax, interest, or penalty~~ finally determined to be due by the Department; ~~and~~

(b) Demonstrate to the satisfaction of the Department that he or she is currently unable to make a single lump sum payment to fully satisfy outstanding liabilities ~~a liability for tax, interest, or penalty~~, or that a lump sum payment of the amounts due would impose an undue economic or financial hardship on the taxpayer; ~~and~~

(c) Pay all outstanding liabilities ~~debts of tax, penalties, and interest~~ not covered by the requested stipulated time payment agreement due ~~that are owed~~ to the Department.

(2) Pursuant to Section 213.24, F.S., the Department will not agree to a stipulated time payment agreement if the outstanding liabilities ~~amount~~ due from the taxpayer are ~~is~~ less than the costs the Department will incur to administer the taxpayer's stipulated time payment agreement.

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.21(4) FS. History–New 10-4-89, Amended 10-5-92, 4-29-03, _____.

12-17.004 Delegation of Authority.

(1) In addition to the statutory authority granted by Section 213.21(4), F.S., the Executive Director of the Department has authority to enter into agreements with taxpayers for scheduling

payments for outstanding liabilities of taxes, interest, penalties, and fees under authority granted by the Governor and Cabinet as the head of the Department.

(2) The Executive Director of the Department is authorized to issue a delegation of hereby delegates authority setting forth those positions authorized to enter into stipulated time payment agreements with taxpayers under Section 213.21(4), F.S. Any such delegation, to the Deputy Executive Director, the General Counsel, the Deputy General Counsel, and the Program Director, the Deputy Program Director, the Regional Managers, and the Service Center Managers of the General Tax Administration Program of the Department, and:

~~(a) In cases where a tax matter is in litigation or in protest pursuant to Rule Chapter 12-6, F.A.C., to:~~

- ~~1. The Assistant General Counsels;~~
- ~~2. The Director, the Deputy Director, and Revenue Program Administrators in Technical Assistance and Dispute Resolution;~~
- ~~3. The Process Manager and Revenue Program Administrators in the Compliance Support Process.~~
- ~~4. The Process Manager, Revenue Program Administrators, and Revenue Administrators in the Taxpayer Services Process.~~

~~(b) In cases involving amounts assessed pursuant to an audit of the taxpayer, prior to initiation of litigation pursuant to Section 72.011, F.S., or expiration of the period for initiating same, to:~~

- ~~1. The Tax Audit Supervisors, Revenue Administrators, and Senior Revenue Administrators in the Director's Office of the General Tax Administration Program; and~~
- ~~2. The Process Manager, Revenue Program Administrators, Tax Law Specialists,~~

~~Government Analysts II, and Senior Tax Specialists in the Compliance Support Process.~~

~~(e) In cases involving a billing or assessment issued by the General Tax Administration Program, to:~~

~~1. The Revenue Program Administrators, Tax Audit Supervisors, Senior Revenue Administrators, and Revenue Administrators in the Director's Office; and~~

~~2. The Process Manager, Revenue Program Administrators, Tax Specialist Administrator, Revenue Administrators, Revenue Managers, and Revenue Specialists in the Taxpayer Services Process.~~

~~(d) When the Executive Director delegates authority to sign stipulated time payment agreements to specific employees or positions that are not provided in this rule, the delegation of authority will be in writing, signed by the Executive Director, and will be for a specified time period. The renewal of such delegations will also be in writing, signed by the Executive Director. Copies of written delegations of authority are maintained on file with the agency clerk in the Office of General Counsel.~~

Rulemaking Authority 20.05(1)(e), 213.06(1), 213.21(5) FS. Law Implemented 213.21(4), 213.24(3) FS. History—New 10-4-89, Amended 10-5-92, 8-17-94, 4-29-03, 9-13-10,_____.

12-17.005 Factors Considered by the Department. The Department will apply one or more of the following factors when determining whether to enter into a stipulated time payment agreement, ~~and~~ in determining the existence of undue economic or financial hardship or the inability of a taxpayer to satisfy outstanding liabilities ~~a liability for tax, interest, or penalty~~ in a lump sum, and in determining the terms of the stipulated time payment agreements:

(1) The taxpayer's previous payment record with the Department;

- (2) The taxpayer's ability to meet a payment schedule obligation;
- (3) The payment amount and the length of time required to retire the outstanding liabilities liability;
- (4) The future outlook of the taxpayer's business and the industry;
- (5) The financial impact on the taxpayer if required to make a lump sum payment;
- (6) Whether the taxpayer collected, but did not remit, the tax addressed by the agreement;
- (7) Whether the taxpayer institutes business practices to ensure the proper collection and remittance of tax in the future;
- (8) Whether the state would eventually receive more of the taxes due by entering into a stipulated time payment agreement than by requiring a lump sum payment;
- (9) Any recommendation submitted by a Department department auditor based on an examination of the taxpayer's records; and
- (10) Any additional written information the taxpayer presents for the Department's consideration.

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.21(4) FS. History—New 10-4-89, Amended 4-29-03,_____.

12-17.006 Procedures.

(1) In instances where the Department does not already have the following information and items, a taxpayer requesting a stipulated time payment agreement must provide the following relief under this chapter shall provide such information and items to the Department:

- (a) Taxpayer's name, address, business partner number, federal employer identification number ~~or social security number~~, audit identification number, and all account identification

numbers requested ~~number issued~~ by the Department;

(b) Any outstanding tax returns identifying any tax due, by tax type, and the taxable period(s) that apply (any outstanding liabilities ~~penalty and interest that is due~~ will be computed at the time the agreement is completed);

(c) An acknowledgment of the outstanding liabilities ~~liability for the total amount of tax, fees, collection costs, or other amounts assessed, and interest, and penalty~~ determined to be due by the Department, and that ~~Section 213.21(2)(a), F.S., eliminates the~~ taxpayer agrees to waive any and all taxpayer's rights, or purported rights, to institute any administrative or judicial proceedings to recover, compromise, defer, restructure, avoid, challenge, or reduce any outstanding liabilities paid or payable pursuant to the agreement under Section 72.011, F.S., with respect to the acknowledged liability;

(d) An oral or written explanation regarding the factual basis for the undue hardship or current inability to satisfy the outstanding liabilities ~~liability~~ in a lump sum and documentary evidence to support the taxpayer's basis for relief; and

(e) A proposal for satisfaction of the outstanding liabilities ~~liability~~ that ~~for tax, interest, and penalty wherein the taxpayer~~ indicates projected cash flow for the succeeding 12 months.

~~(2) Where the tax, interest, or penalty is assessed as a result of an audit of the taxpayer, the taxpayer shall file the written request with the Process Manager, Compliance Support Process, Department of Revenue, P. O. Box 5139, Tallahassee, Florida 32314-5139, prior to the date an assessment becomes final. Upon execution of the stipulated agreement, it will be referred to the Taxpayer Services Process for administration.~~

~~(3) In cases involving notices, billings, jeopardy assessments, audit assessments, and tax warrants referred for collection, and tax warrants issued by the Department, the taxpayer shall~~

~~file the information and items required by subsection (1) with the office which issued the notice, billing, jeopardy assessment, audit assessment, or tax warrant.~~

~~(4) In those instances where a protest is referred to the Office of Technical Assistance and Dispute Resolution (the Office) by the Compliance Enforcement Process, the Compliance Support Process, or the Taxpayer Services Process, all final assessments will be referred back to the originating process. If a taxpayer has requested a payment agreement, and the Office agrees that the taxpayer qualifies pursuant to this rule chapter, the Office will include, as part of the closing agreement, the terms of any stipulated payment plan that the Office has determined is appropriate pursuant to Section 213.21(4), F.S.~~

~~(5) On receipt of the taxpayer's request for a stipulated time payment agreement, the Department will take any of the following additional actions required by the taxpayer's specific circumstances:~~

~~(a) The Department will issue a warrant for the total liability for any one or more of the following reasons:~~

- ~~1. To protect the state's interest in the taxpayer's assets;~~
- ~~2. To establish priority in real or tangible property rights;~~
- ~~3. To establish priority in the event of possible bankruptcy;~~
- ~~4. To prevent the disposal of assets without the state's consent;~~
- ~~5. The taxpayer has failed to respond to previous collection actions by the Department; or~~
- ~~6. The taxpayer has a previous history of delinquent filings or payments.~~

~~(b) The issuance of levy instructions to the Sheriff to execute the warrant will be withheld as long as:~~

- ~~1. This stipulated time payment agreement is in force and the taxpayer has not defaulted~~

~~under the terms of the agreement; and~~

~~2. The taxpayer is in complete compliance with all other requirements of the revenue laws.~~

~~(e) The Department will also investigate the financial position of the taxpayer, when the Department determines that the information submitted pursuant to subsection (1) requires confirmation.~~

~~(2)(6)~~ After consideration of the taxpayer's request for relief, the Department will ~~shall~~:

(a) Accept the request by executing a stipulated time payment agreement; or

(b) Reject the request in whole or in part; or

(c) Make a counter-proposal.

~~(3)(7)~~ No change.

~~(4)(8)~~ A request for a stipulated time payment agreement which is not accepted on behalf of the Department will ~~shall~~ not be deemed an admission of liability pursuant to Section 90.408, F.S. by the Department or the taxpayer and will not prejudice either party's position in ~~administrative or judicial proceedings.~~

Rulemaking Authority 20.05(1)(e), 213.06(1), 213.21(5) FS. Law Implemented 90.408, 213.05, 213.21(2), (4), 213.24(3), 443.1316, 443.141 FS. History—New 10-4-89, Amended 10-5-92, 4-29-03, _____.

12-17.007 Form and Execution of Stipulated Time Payment Agreements.

(1) Every stipulated time payment agreement executed under this chapter will ~~shall~~ specify the name, business partner number, account identification number, and audit identification number, if applicable, of the taxpayer; the taxpayer's current business address and

the current address of the physical location of the business; the type of ~~tax~~ tax(es) and the taxable ~~periods~~ period(s) covered; the date of the ~~proposed~~ assessment, ~~or~~ warrant, or notice of lien, and the terms of the agreement.

~~(2) The Department prescribes form DR-68 (Stipulated Time Payment Agreement), as the form to be used by the Department for the purposes of this chapter.~~

~~(2)(3)~~ Every stipulated time payment agreement must ~~shall~~ be signed on behalf of the Department by a person with delegated authority to enter into the agreement under Rule 12-17.004, F.A.C.

~~(3)(4)~~ Every stipulated time payment agreement must ~~shall~~ be signed by the taxpayer or the taxpayer's representative with authority to enter into the agreement on behalf of the taxpayer.

(a) In the case of a corporate taxpayer, an officer of the corporation must ~~shall~~ sign the agreement unless paragraph (c) of this subsection is applicable.

(b) An officer's or fiduciary's signature on a stipulated time payment agreement made by or for a taxpayer is ~~shall be~~ prima facie evidence that such individual was authorized to sign the agreement on behalf of the taxpayer.

(c) A stipulated time payment agreement may be signed by a representative of the taxpayer who files with the Department a Power of Attorney and Declaration of Representative (Form DR-835, incorporated by reference in Rule 12-6.0015, F.A.C.) ~~power of attorney form (DR-835), which grants the representative authority to execute the agreement on behalf of the taxpayer.~~

~~(4)(5)~~ A stipulated time payment agreement will become effective when it has been executed by all ~~both~~ parties. Any modification of the terms of the agreement must be in writing and executed by all parties. Upon presentation of the agreement, the Department will provide the

taxpayer with a:

~~(a) A detailed amortization schedule of payments required for satisfaction of the outstanding liabilities, tax, interest, and penalty referenced in the stipulated time payment agreement, which will be placed on the stipulated time payment agreement above the signature lines; and.~~

~~(b) Payment coupons.~~

~~(6) Form DR-68 is incorporated by reference in Rule 12-17.010, F.A.C., and can be obtained as discussed in that rule.~~

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21(2), (4), 213.24(3), 213.69, 443.1316 FS. History—New 10-4-89, Amended 10-5-92, 8-17-94, 4-29-03, _____.

12-17.008 Terms of Stipulated Time Payment Agreements.

(1) Every stipulated time payment agreement will include a discussion and determination of each of the following issues:

(a) The number of payments to be made during the term of the agreement (~~e.g., 6, 12, or 24 payments~~);

(b) The frequency and due date of each payment to be made during the term of the agreement (~~e.g., weekly, bi-weekly, or monthly~~);

(c) The amount of any ~~Whether a~~ down payment and the amount of each payment to be made during is required, as part of the term terms of the agreement ~~and the amount of such down payment~~;

~~(d) Whether each payment will be an equal amount (e.g., an equal amount due each~~

payment period), or equal payments with the final payment being a balloon payment);

~~(d)~~(e) How the Department will allocate each payment to reduce the outstanding liabilities, debt of tax, penalty, or interest as provided by Section 213.75, F.S.;

~~(f) Whether any portion of the liability will remain unpaid at the end of the current payment agreement, and if so, which of the following actions will be taken by the Department:~~

~~1. The terms and conditions of another payment agreement will be negotiated upon full compliance with the current agreement; or~~

~~2. The Department will request the taxpayer to pay the unpaid balance in full based on:~~

~~a. The taxpayer's failure to fully comply with the current agreement; or~~

~~b. An improvement in the taxpayer's financial condition.~~

~~(2) A down payment in a stipulated time payment agreement will be based upon the taxpayer's filing and payment history, the amount of the outstanding liabilities, and any financial information provided by the taxpayer reflecting the taxpayer's ability to pay. The determinations made in paragraphs (1)(a) through (f) of this rule by the Department will be based on the factors contained in Rule 12A-17.005 and subsection 12-17.006(5), F.A.C.~~

~~(3) Where there is risk to the state regarding collection of the amount due, additional terms will be included in a stipulated time payment agreement.~~

~~(4)(3) Every stipulated time payment agreement will made pursuant to this chapter shall include a notification to the taxpayer that:~~

~~(a) Interest will shall continue to accrue on the unpaid balance of the tax at the stated rate, provided by law; and~~

~~(b) The taxpayer agrees to waive any and all rights, or purported rights, to institute any judicial or administrative proceeding to recover, compromise, defer, restructure, avoid, challenge~~

~~or reduce any outstanding liabilities paid or payable pursuant to the agreement. The Department will file a lien for the full amount of the unpaid liability, unless the Department representative who negotiates the agreement documents in writing the reason(s) for not filing a lien (any reason documented by the representative is acceptable). Also, the establishment of a stipulated time payment agreement does not invalidate or withdraw a warrant issued with respect to the liability covered by the agreement;~~

(c) The taxpayer agrees to accurately complete and timely file all required tax returns and timely remit all taxes that become due during the term of the agreement.

(d) The taxpayer agrees to pay each stipulated time payment to the Department by electronic means on or before the due date, unless a variance or waiver is granted pursuant to Section 120.542, F.S., and Rule Chapter 28-104, F.A.C.

(e) The taxpayer understands that the provisions of Section 213.732, F.S., relating to jeopardy assessments continue to apply during the terms of the agreement.

~~(f)~~(e) The current stipulated time payment agreement will be void if the taxpayer will be held in default of the terms of the stipulated time payment agreement when the taxpayer fails to comply:

- ~~1. Comply with all terms conditions of the agreement.;~~~~or~~
- ~~2. Submit all returns and pay all taxes in full pursuant to the revenue laws of Florida enumerated in Section 213.05, F.S., that become due during the term of the agreement.~~

~~(d) The provisions of the statutes relating to jeopardy assessments will continue to apply to a taxpayer who has entered into a stipulated time payment agreement.~~

~~(e) A taxpayer must submit cash, a cashier's check, or a money order to the Department within seven calendar days of being informed that he or she has paid a stipulated time payment~~

~~with a check that is not valid due to insufficient funds.~~

~~(f) Explains the rights granted to each taxpayer by subsection (2) of Rule 12-17.009, F.A.C., to protest the termination of a stipulated time payment agreement.~~

(g) If the taxpayer is held in default of the terms of the agreement, the Department will implement one or more of the following actions:

1. Issue a warrant or notice of lien for any outstanding liability and file a judgment lien certificate;

2. Issue levy instructions to the sheriff;

3. Refer the outstanding liability to the Department of Business and Professional Regulation for license action;

4. Implement the garnishment provisions of Section 213.67, F.S.;

5. Implement the provisions of Sections 212.18 and 213.692, F.S., to revoke all certificates of registration, permits, or licenses issued by the Department to the taxpayer;

6. Implement the provisions of Section 443.141, F.S., for collection of the outstanding contributions or reimbursements;

7. Assess the responsible person a penalty pursuant to Section 213.29, F.S.; or

8. Any other action provided by law to collect all outstanding liabilities.

(h) If the taxpayer fails to comply with the terms of the agreement, the Department is entitled to recover the outstanding liabilities, including attorney's fees.

(i) The waiver by the Department of any breach of a stipulated time payment agreement by the taxpayer does not constitute a waiver of any other breach.

(5) When a taxpayer is in compliance with the terms of a stipulated time payment agreement, the Department agrees not to commence any additional collection activities for the

outstanding liabilities. However, the provisions of Sections 213.732 and 443.141, F.S., relating to jeopardy assessments continue to apply during the terms of the agreement.

(6) The amount of the outstanding liabilities identified in any stipulated time payment agreement is subject to increase when the Department discovers through audit or otherwise that the outstanding liabilities have been understated. If the Department discovers through audit or otherwise that the outstanding liabilities are understated, the taxpayer will be assessed the additional liabilities. The taxpayer may protest the additional outstanding liabilities assessed, as provided in Rule Chapter 12-6, F.A.C.

Rulemaking Authority 20.05(1)(e), 213.06(1), 213.21(5) FS. Law Implemented 213.21(2), (4), 213.24(3), 213.69, 443.1316 FS. History—New 10-4-89, Amended 10-5-92, 6-15-93, 4-29-03, _____.

12-17.009 ~~Termination of~~ Agreements in Default.

(1) A taxpayer who fails to comply with the terms of ~~The Department will void a stipulated time payment agreement~~ will be held in default. ~~under one or both of the following conditions:~~

(a) ~~The taxpayer fails to make full payment when due under the terms of the agreement,~~
or

(b) ~~The taxpayer fails to remit in full amounts which become due and payable after the execution of the agreement.~~

(2) In the absence of jeopardy, as provided in Section 213.732, F.S., before holding a taxpayer in default of ~~Before voiding~~ a stipulated time payment agreement, the Department will notify the taxpayer in writing of the taxpayer's failure to meet the terms of the agreement and

~~provide afford~~ the taxpayer the opportunity to present evidence of compliance with the current agreement, ~~unless jeopardy to the revenue has previously been assessed.~~

(a) If the taxpayer fails to present evidence of compliance ~~respond to this notification~~ within 15 consecutive calendar days of the date on the notification from the Department, the taxpayer will be held in default of the terms of the agreement ~~is voided~~.

(b) If the taxpayer agreement is held in default ~~voided~~ by the Department, the taxpayer will shall have an additional 15 consecutive calendar days after the date the Department notifies the taxpayer ~~that the agreement has been voided~~ to request that the Department reconsider ~~voiding the agreement~~ and to submit written proof that there are “reasonable cause” grounds for not holding ~~voiding~~ the agreement in default, pursuant to the “reasonable cause” provisions in Section 213.21, F.S., and Rule 12-13.007, F.A.C.

(c) If the taxpayer does not establish “reasonable cause” within the 15 consecutive calendar day period ~~discussed in paragraph (b) of this subsection~~, the Department’s decision that the taxpayer is in default of the terms of ~~to void~~ the agreement becomes ~~is~~ final.

(3) Any outstanding liabilities that remain ~~Should the Department void the agreement,~~ any unpaid balance due at under the time a taxpayer is held in default of the terms of a stipulated time payment agreement are ~~is~~ immediately due and payable.

(4) If subsection (1) is applicable or if an agreement has otherwise expired, the Department will implement one or more of the following steps:

(a) ~~Issue levy instructions to the sheriff to issue a warrant for the remaining liability or execute that warrant or a warrant previously issued with respect to the liability.~~

(b) ~~Refer the issue to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation for beverage license action;~~

~~(c) Implement the garnishment provisions of Section 213.67, F.S., and Part II of Rule Chapter 12-21, F.A.C.;~~

~~(d) Implement the collection referral provisions of Section 213.27, F.S.; and~~

~~(e) Cancel the sales tax registration certificate of a taxpayer pursuant to Section 212.18(3)(b), F.S.~~

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.21(2), (4), 213.24(3), 213.27, 213.67, 213.69, 213.692, 443.1316 FS. History—New 10-4-89, Amended 4-29-03,_____.

~~12-17.010 Public Use Forms. The following public use forms are used by the Department in the processing and scheduling of stipulated time payment agreements and are hereby incorporated by reference. These forms are available by one or more of the following methods: 1) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Distribution Center at (850) 922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850) 922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800) 352-3671 (in Florida only) or (850) 488-6800; or, 6) downloading selected forms from the Department's Internet site stated in the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department's TDD at (800) 367-8331.~~

Form Number	Title	Effective Date
DR-68	Stipulated Time Payment Agreement	
	(n. 02/03)	04/03

Rulemaking Authority 213.06(1) FS. Law Implemented 213.21(4) FS. History—New 4-29-03,

Repealed.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12-21, FLORIDA ADMINISTRATIVE CODE

WARRANTS, JEOPARDY, AND POST-WARRANT COLLECTIONS

AMENDING RULES 12-21.001, 12-21.002, 12-21.005, 12-21.010,

12-21.040, 12-21.201, 12-21.203, 12-21.204, AND 12-21.205

CREATING RULES 12-21.0015 AND 12-21.208

REPEALING RULES 12-21.007, 12-21.050, AND 12-21.202

SUMMARY OF PROPOSED RULES

The proposed changes to Part I (Warrants, Liens, Jeopardy, and Levy, Seizure, and Sale of Property) of Rule Chapter 12-21, F.A.C., Rules 12-21.001 through 12-21.050, F.A.C.: (1) change the title of the chapter part to more accurately reflect the scope of Part I of the chapter; (2) provide that the scope of the rule chapter covers instances in which the Department issues a warrant with regard to any tax it administers; (3) provide that delegations of authority authorized by the Executive Director of the Department to issue, satisfy, cancel, or amend warrants and judgment lien certificates, to issue and release jeopardy assessments and related warrants and judgment lien certificates, to issue an execution to a sheriff, and to levy, freeze, or sell a taxpayer's property will be in writing, signed by the Executive Director, and maintained by the agency clerk in the Office of the General Counsel; (4) provide definitions of terms applicable to the entire rule chapter; (5) clarify when the Department will issue a warrant and file a judgment lien certificate; (6) update provisions to reflect the current provisions of Chapter 55, F.S. (Judgments), regarding the filing of a judgment lien certificate with the Department of State to

obtain a lien upon a taxpayer's personal property; (7) provide the duration of the Department's lien; (8) clarify when the Department will consider jeopardy to the revenue to exist, and state what factors the Department will consider in determining whether collection will be jeopardized by delay; (9) provide the notice requirements and review rights with regard to a notice or finding of the facts constituting jeopardy to the revenue, pursuant to Section 213.732, F.S.; (10) repeal as unnecessary Rule 12-21.007, F.A.C., Seizure of Property Without Jeopardy; (11) clarify and update provisions regarding the manner and conditions of sale of taxpayer property; (12) clarify and update provisions regarding satisfaction, cancellation, and amendment of warrants and judgment liens; and (13) repeal the adoption of forms in Rule 12-21.050, F.A.C., Public Use Forms, that do not meet the definition of a "rule" in Section 120.52(15), F.S., as unnecessary.

The proposed changes to Part II (Administrative Garnishment for Unpaid Taxes) of Rule Chapter 12-21, F.A.C., Rules 12-21.201 through 12-21.208, F.A.C.: (1) provide that the scope of Part II of the rule chapter is to implement the provisions of Section 213.67, F.S.; (2) clarify that the Department will exercise the authority to freeze a taxpayer's assets pursuant to Sections 206.18(4) and 213.758, F.S., at the same time and in the same manner as provided in Section 213.67, F.S., and Part II of this chapter; (3) repeal Rule 12-21.202, F.A.C., Definitions, to eliminate definitions of terms that are provided in Part I of the rule chapter, as amended; (4) update provisions regarding the issuance of a Notice of Freeze to custodians of a delinquent taxpayer's assets; (5) update provisions regarding the issuance of a Notice of Intent to Levy to delinquent taxpayers; (6) update provisions regarding levying upon a delinquent taxpayer's assets; and (7) provide procedures for Section 213.67(9), F.S., which authorizes the Department to withhold and levy upon certain payments by the State scheduled to persons with outstanding tax warrants.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The proposed changes to Rule Chapter 12-21, F.A.C., are necessary to: (1) change the title of the rule chapter to “Warrants, Jeopardy, and Post-Warrant Collections,” to reflect the scope of the chapter, as revised; (2) provide in the rule chapter the current procedures used by the Department in warrant, jeopardy, and post-warrant collections situations; (3) eliminate unnecessary references to forms and obsolete provisions; and (4) update and incorporate into the rule chapter applicable provisions of Rule 12A-1.090, F.A.C., Tax Liens, Garnishment and Jeopardy Assessments, which will be repealed.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

SEPTEMBER 20, 2012

A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on August 31, 2012 (Vol. 38, No. 35, pp. 3560 - 3561), to advise the public of the proposed changes to Rule Chapter 12-21, F.A.C. (Warrants, Jeopardy, and Post-Warrant Collections), and to provide that, if requested in writing, a rule development workshop would be held on September 20, 2012. No request was received by the Department. No written comments were received by the Department.

After further review of provisions regarding delegations of authority issued by the Executive Director of the Department, the proposed provisions of subsection (2) of Rule 12-

21.001, F.A.C. (Scope; Delegation of Authority) were revised to provide that delegations of authority authorized by the Executive Director of the Department to issue, satisfy, cancel, or amend warrants and judgment lien certificates, to issue and release jeopardy assessments and related warrants and judgment lien certificates, to issue an execution to a sheriff, and to levy, freeze, or sell a taxpayer's property will be in writing, signed by the Executive Director, and maintained by the agency clerk in the Office of the General Counsel

After further review of the provisions of paragraph 213.67(6)(b), F.S., the proposed provisions of paragraph (2)(b) of Rule 12-21.205, F.A.C. (Departmental Levy on Frozen Assets; Procedures), were revised.

SUMMARY OF PUBLIC HEARING

HELD ON SEPTEMBER 24, 2013

The Governor and Cabinet, sitting as head of the Department of Revenue, met on September 24, 2013, and approved the publication of the Notice of Proposed Rule for changes to Rule Chapter 12-21, F.A.C. (Warrants, Jeopardy, and Post-Warrant Collections). A notice for the public hearing was published in the Florida Administrative Register on September 13, 2013 (Vol. 39, No. 179, pp. 4604 - 4607).

SUMMARY OF RULE HEARING

NOVEMBER 13, 2013

The proposed amendments to Rule Chapter 12-21, F.A.C. (Warrants, Jeopardy, and Post-Warrant Collections), were noticed for a rule hearing in the Florida Administrative Register on October 21, 2013 (Vol. 39, No. 205, pp. 5245-5254). A rule hearing was held on November 13,

2013, in Room 1220, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one from the public was in attendance. No written comments were received by the Department. In response to comments received from the Joint Administrative Procedures Committee, proposed subsection (2) of Rule 12-21.208, F.A.C., has been changed so that, when adopted, that subsection will read:

(2) The Department will request that payments to any person, as defined in Section 212.02, F.S., who provides commodities or services to the State, leases real property to the State, or constructs a public building or public work for the State be withheld by the Chief Financial Officer when such person has an outstanding warrant.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12-21, FLORIDA ADMINISTRATIVE CODE

WARRANTS, JEOPARDY, AND POST-WARRANT COLLECTIONS

~~LEVY, SEIZURE AND SALE OF PROPERTY~~

AMENDING RULES 12-21.001, 12-21.002, 12-21.005, 12-21.010,

12-21.040, 12-21.201, 12-21.203, 12-21.204, AND 12-21.205

CREATING RULES 12-21.0015 AND 12-21.208

REPEALING RULES 12-21.007, 12-21.050, AND 12-21.202

PART I WARRANTS, LIENS, JEOPARDY, AND LEVY,

SEIZURE, AND SALE OF PROPERTY

12-21.001 Scope; Delegation of Authority.

(1) This chapter covers instances all-eases in which the Department issues a warrant with regard to any tax it administers tax assessments, whether or not final, proceed to levy and seizure of taxpayers' property by the Sheriff. The filing of a warrant and associated judgment lien certificate establish the State of Florida's interest and priority as a creditor. Parts I and II of this chapter indicate when the Department will take additional enforcement actions. This chapter also applies to all sales of seized property made by the Department pursuant to Section 213.73, F.S.

(2) The Executive Director of the Department is authorized to issue a delegation of authority setting forth those positions that are authorized to issue, satisfy, cancel, amend, release, in whole or in part, or withdraw warrants, and to subordinate the Department's lien, to issue and release jeopardy assessments and related warrants, to issue an execution to a sheriff, and to

freeze, levy, or sell a taxpayer's property. Any such delegation will be in writing, signed by the Executive Director. Copies of written delegations of authority are maintained on file with the agency clerk in the Office of the General Counsel.

Rulemaking Specific Authority 198.08, ~~72.011(2)~~, ~~120.54(1)~~, 199.202, 202.26(3), 212.18(2), 213.06(1) FS. Law Implemented 55.10, 55.202, 55.204, 56.27, 198.20, 198.22, 198.33, 199.262, 201.16, 202.33, 202.36, 206.075, 206.18, 206.97, 206.9835, 206.9915, ~~207.014~~, 211.125, 211.33, 212.14, 212.15, 213.67, 213.69, 213.73, 213.731, 213.732, 213.733, 213.74, 213.75, 213.758, 220.827, 220.829, 336.021, 336.025, 403.718(3)(a), 403.7185(3)(a), 443.1316, 538.11, 624.5092, 681.117 FS. History-New 7-1-88, Amended _____.

12-21.0015 Definitions. For the purposes of this Chapter, the following terms and phrases are defined as:

(1) "Assets" means any personal property, credits, or debts, owned by or owed to a delinquent taxpayer, excluding wages. For the purposes of Part I of this Chapter, "assets" also includes real property.

(2) "Custodian" means any person, as defined in Section 212.02(12), F.S., the Federal Government, or any agency or instrumentality of the Federal Government, having control or possession of any assets owned by, or owed to, any delinquent taxpayer.

(3) "Delinquent taxpayer" means any taxpayer that has been notified of any tax, fee, surcharge, penalty, interest, administrative fees, or costs of collection owed to the Department, and the time period for disputing the debt has expired.

(4) "Department" means the Florida Department of Revenue.

(5) "Final resolution" means that all review rights have been exhausted or expired.

(6) “Intangible personal property” means all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents, such as:

(a) All stocks or shares of incorporated or unincorporated companies, business trusts, and mutual funds;

(b) All notes, bonds, and other obligations for the payment of money; or,

(c) Money, including United States legal tender, certificates of deposit, cashier’s and certified checks, bills of exchange, drafts, the cash equivalent of annuities and life insurance policies, and similar instruments.

(7) “Personal property” means intangible personal property or tangible personal property.

(8) “Tangible personal property” means tangible personal property as defined in Section 212.02(19), F.S.

(9) “Wages” means all remuneration for employment paid or owed to a taxpayer (and the cash value of all remuneration paid in any medium other than cash), including salaries, hourly wages, commissions, bonuses, back pay awards, and tips or gratuities received while performing services which constitute employment.

(10) “Warrant” includes any tax warrant, notice of lien, or other warrant issued to secure payment of delinquent taxes, fees, or surcharges, together with the interest, penalties, administrative fees, and costs of collection.

Rulemaking Authority 198.08, 199.202, 202.26(3), 212.18(2), 213.06(1) FS. Law Implemented 198.01(1), (3), (10), (11), 201.16, 202.11(4), (8), 202.33, 206.01(1), (10), 206.18, 206.97, 206.9835, 206.9915, 211.01(6), (15), (25), 212.02(5), (12), (19), 213.67, 213.69, 213.73, 213.731, 213.758, 220.03(1)(f), (g), (z), 443.1316 FS. History-New _____.

12-21.002 Warrants ~~Warrant~~ and Liens ~~Instructions for Levy~~.

(1) Warrants. The Department will issue a warrant: ~~Tax warrants and instructions for levy may be issued at the initiation of any office in the Department of Revenue upon the determination that tax liability exists and an assessment has been or is being made thereon. A warrant shall only be so issued based on an assessment. Each tax warrant and instructions for levy, prescribed by the Department, is incorporated by reference in Rule 12-21.050, F.A.C.~~

(a) When an assessment has been made and collection efforts have been unsuccessful;

(b) When an assessment is made pursuant to the provisions of Sections 202.35(3), 202.36(1), 206.18(1) and (2), 212.12(5)(b), 212.14(1), 213.758, or 220.813, F.S.; or

(c) When any tax becomes delinquent and is in jeopardy. When jeopardy is asserted in or with an assessment, the Department will proceed in the manner specified for jeopardy assessment in Section 213.732, F.S., and Rule 12-21.005, F.A.C. However, when jeopardy is asserted in or with an assessment for reemployment tax imposed under the authority of Chapter 443, F.S., the Department will proceed as provided in Section 443.141(3)(g), F.S.

(2) When any tax becomes delinquent, but there is no jeopardy, the Department must provide the taxpayer 30 days notice, informing the taxpayer that a warrant will be issued or notifying the taxpayer that such action is indicated or authorized under the circumstances.

~~Instructions for levy shall be made in the appropriate format consistent with the guidelines of each Sheriff.~~

(3)(a) Each warrant will be issued for the amount of tax, fees, and surcharges due or estimated to be due, together with the interest, penalties, administrative fees, and costs of collection. The warrant will be directed to the sheriff of those counties of the state in which the delinquent taxpayer's property or any part thereof may be situated and will be recorded with the

appropriate Clerk(s) of the Circuit Court. Upon recording, the warrant becomes a lien in favor of the state upon the taxpayer's real property in that county in the same manner as a recorded judgment and in the amount indicated by the warrant. If there is jeopardy to the tax, penalty or interest the person issuing the assessment shall give any required notice of jeopardy findings and hold any required jeopardy meeting with the taxpayer.

(b) When a warrant is issued, the Department will also file a judgment lien certificate with the Department of State, pursuant to the provisions of Chapter 55, F.S. Upon filing, the amount of the judgment lien certificate will become a lien upon the delinquent taxpayer's personal property in this state, wherever located, which is subject to execution.

(c) The lien in favor of the state expires twenty (20) years after the date of the original filing of the warrant. However:

1. Liens for estate taxes arising under the authority of Chapter 198, F.S., are enforceable for twelve (12) years on the gross estate of the decedent, and irrespective of other laws extending such liens, in no event can such liens continue for more than twenty (20) years after the date of death of the decedent, subject to the provisions of Sections 198.22 and 198.33, F.S.;

2. Liens for reemployment assistance tax imposed under Chapter 443, F.S., expire ten (10) years after the date of the original filing of the warrant; and

3.a. Liens for corporate income tax imposed under Chapter 220, F.S., created by an assessment pursuant to a notice of deficiency will expire unless a warrant is filed within five (5) years from the date proceedings in court for review have terminated or the time for initiating such review has expired.

b. Liens for corporate income tax imposed under Chapter 220, F.S., created by assessment pursuant to the filing of a return without payment of the tax, penalty, or interest shown to be due

will expire unless a warrant is filed within five (5) years from the date such return was filed.

(d) An action to collect tax cannot be commenced after the expiration of the lien securing payment.

(4) The Department will enter into written agreements to subordinate or release a lien (in whole or in part).

(5)(4) The personal liability of a purchaser or transferee pursuant to Sections 206.18(2), 213.758, and 220.829, F.S., does not create a lien upon such purchaser's property. Rather, the procedures outlined in this rule chapter must be followed to create and enforce a lien in favor of the state. If the assessment is settled or compromised then the person issuing the assessment shall proceed consistently with the Sheriff's guidelines to release the property from seizure.

Rulemaking Specific Authority 198.08, 72.011(2), 120.54(1), 199.202, 202.26(3), 212.18(2), 213.06(1) FS. Law Implemented 55.10, 55.202, 55.204(2), 95.091(1)(b), 198.20, 198.22, 198.33, 199.262, 201.16, 202.33(3), 202.35, 202.36, 206.075, 206.18, 206.97, 206.9835, 206.9915, 211.125, 211.33, 212.12, 212.14, 212.15, 213.69, 213.73, 213.731, 213.732, 213.758, 220.813, 220.827, 220.829, 213.74, 213.75, 336.021, 336.025, 403.718(3)(a), 403.7185(3)(a), 443.131(3)(g), 538.11, 624.5092, 681.117 FS. History-New 7-1-88, Amended 8-10-92,_____.

12-21.005 Seizure of Property Under Jeopardy.

(1) Jeopardy Determinations. Jeopardy will be asserted in or with an assessment if at least one of the following conditions is present: A taxpayer may secure review of a lien or lien and seizure effected under this section by implementing the provisions of subsection (2) of this section, without prejudicing later judicial or administrative proceedings. Jeopardy may be considered to exist where a taxpayer is about to depart from the state, to conceal its property, or

~~to do any other act tending to prejudice or render wholly or partly ineffectual the normal procedures for collection of any amount of tax, penalty, or interest which the Department determines is due, or if the Department otherwise finds that the collection of such amount will be jeopardized by delay. Jeopardy may be considered to exist in the case of billings where the taxpayer has ceased to make regular tax payments and the estimated deficiency is deemed or appears to be substantial. The Department shall issue to the taxpayer a notice of such jeopardy findings.~~

(a) The Department has cause to believe the taxpayer is about to depart from the state;

(b) The Department has cause to believe the taxpayer is about to do any act tending to prejudice or render wholly or partly ineffectual the normal procedures for collection of any amount of tax, fee, surcharge, penalty, interest, administrative fee, or cost of collection that the Department determines is due;

(c) The Department has cause to believe the taxpayer is concealing or transferring or is about to conceal or transfer its property.

(d) The Department finds that the collection of the amount determined to be due will be jeopardized by delay; or

(e) The taxpayer has ceased to make payments, and the estimated deficiency is substantial for that taxpayer.

(2) In making a determination that the collection of any amount of tax, fee, surcharge, penalty, interest, administrative fee, or cost of collection required to be collected and paid will be jeopardized by delay pursuant to paragraph (1)(d), the Department will consider the following:

~~If any lien or lien and seizure is effected based on jeopardy conditions with or without a final assessment then the originator of the assessment shall immediately notify the taxpayer that the~~

~~taxpayer shall have an opportunity to appear at a meeting within 10 days and make a written statement of why he believes that some or all of the amount is not due or owed or that no jeopardy to the revenue exists. The issuer of the jeopardy finding shall comply with any other applicable requirements such as Section 214.12(2), F.S., prior to initiating any jeopardy lien or seizure.~~

(a) The prior history of the taxpayer's compliance or noncompliance with requirements for reporting and paying any tax; ~~To secure review of a jeopardy lien or lien and seizure, the taxpayer may make a written statement which may include a statement of why he believes no jeopardy exists. The Department may meet informally with the taxpayer before determining whether to release a jeopardy assessment lien or lien and seizure.~~

(b) The type of business, including the transient or nontransient nature of the business; ~~If the taxpayer makes such a statement under subsection (a) of this section, the Department shall determine within 20 days of receipt of such statement whether or not such jeopardy assessment lien or lien and seizure shall be released and shall send written notice to taxpayer of such determination. However, to conclude review of a jeopardy lien or lien and seizure under this section, no further notice of decision shall be required and the assessment shall be a final assessment when issued. To secure review of an assessment the taxpayer must proceed under the provisions of Rule Chapter 12-6, F.A.C.~~

(c) The liquidity of assets; ~~If the assessment is not yet final and if it is in protest, then the originator of the assessment shall notify Technical Assistance and Dispute Resolution of any jeopardy seizure. The Department shall instruct the Sheriff regarding the time frames under which the sale is to take place.~~

(d) The mobility of assets;

(e) The pending sale or transfer of title to assets; or

(f) The financial status of the person or dealer owing the tax, including the existence of money judgments.

(3) A warrant will be issued and recorded simultaneously with or after the issuance of a jeopardy assessment. The procedure in this rule shall be for investigative purposes as specified in Section 120.57(5), Florida Statutes.

(4) Notice and Taxpayer Review Rights. The Department will issue in or with a jeopardy assessment a notice or finding of the specific facts that support a determination that jeopardy to the revenue exists.

(a) This notice informs the taxpayer that:

1. To request a conference with the Department, the taxpayer must contact the office of the Department that issued the jeopardy assessment. The conference must be held within 10 days after issuance of the jeopardy assessment, at a time and place set by the Department.

2. The taxpayer has the opportunity to appear at this conference and make oral and written statements of why the delinquent taxpayer believes no jeopardy exists and why a warrant based upon the jeopardy assessment should be released, if it was recorded.

(b) The conference will be conducted informally and will not be in the nature of a formal evidentiary hearing. The taxpayer may present relevant information, orally or in writing, but discovery and cross-examination will not be allowed. The Department is not required to transcribe the proceedings, but the taxpayer may transcribe the conference at the taxpayer's own expense.

(c) The Department will determine within twenty (20) days after receipt of a taxpayer's statement whether the warrant based upon the jeopardy assessment should be released in whole

or in part. The Department will provide written notice of this determination to the delinquent taxpayer.

(d) When the Department determines, based on the information received at the taxpayer conference, that the warrant based upon the jeopardy assessment should be released in whole or in part, the Department will release or correct the warrant accordingly.

(e) If the Department proceeds to seize or freeze the property of a taxpayer upon a determination of jeopardy:

1. The taxpayer has a right to a meeting with the Department immediately or within 24 hours after requesting such meeting. The Department will determine whether to release the seizure or freeze within 24 hours after the meeting.

2. If the Department does not release the seizure or freeze of property, the taxpayer has the right to request a hearing within five (5) days before the circuit court. The taxpayer and the Department may present evidence with respect to the issue of jeopardy at the hearing. Venue in such an action will lie in the county in which the seizure was effected or, if there are multiple seizures based upon the same assessment, venue will also lie in Leon County.

Rulemaking Specific Authority 198.08, 72.011(2), 120.54(1), 199.202, 202.26(3), 212.18(2), 213.06(1) FS. Law Implemented 198.20, 199.262, 201.16, 202.33(3), 202.36, 206.075, 206.97, 206.9835, 206.9915, 207.014, 211.125, 211.33, 212.14, 212.15, 213.69, 213.73, 213.731, 213.732, 213.733, 213.74, 213.75, 213.758, 220.827, 220.829, 336.021, 336.025, 403.718(3)(a), 403.7185(3)(a), 538.11, 624.5092, 681.117 FS. History-New 7-1-88, Amended _____.

12-21.007 Seizure of Property Without Jeopardy. Any assessment which is final and on which review rights have been exhausted or have expired shall be enforceable and may proceed

~~to tax warrant, or levy, seizure and sale without regard to the review rights afforded in jeopardy conditions.~~

Rulemaking Specific Authority 72.011(2), 120.54(1), 199.202, 212.18(2), 213.06(1) FS. Law Implemented 199.262, 201.16, 206.075, 206.97, 206.9835, 207.014, 211.125, 212.14, 212.15, 213.69, 213.73, 213.732, 213.74, 213.75, 336.021, 336.025 FS. History-New 7-1-88,

Repealed.

12-21.010 Manner and Conditions of Sale of Property.

(1) Manner and Conditions of Sale of Property. ~~The sale~~ Sale of taxpayer property ~~is shall~~ be authorized only after a tax, fee, surcharge, penalty, interest, administrative fee, or cost of collection final assessment has been issued and all review rights under Chapter 72, F.S., have been exhausted or have expired. Notice of sale will shall be given as provided in Chapter 56, F.S. The ~~Executive Director of the Department of Revenue or the Executive Director's designee~~ will may determine a minimum price for the sale of which property that shall be sold which is subject to of a levy, and the sheriff will be advised in writing of the minimum price by the Department ~~whenever a levy is made as a result of an execution upon a tax lien.~~ The Department will consider ~~That determination will be at the discretion of the Executive Director or the Executive Director's designee taking into consideration~~ the value of the property, the extent of the liability, and the expense of making the levy and sale in determining a minimum price. ~~The Sheriff shall be advised in writing of the minimum price for the property. The Sheriff may be appointed the Department's designee under this section.~~

(2) Should the highest bid for the seized property not equal the minimum price established for such property, ~~at the discretion of the~~ Department will ~~Executive Director or the~~

~~Executive Director's designee~~ one of the following dispositions shall be made:

(a) Reschedule the ~~The sale may be rescheduled;~~

(b) Declare the ~~The state to be~~ ~~may be declared~~ the purchaser at the minimum such price upon prior request by a state agency, which state agency will pay costs to the sheriff ~~Sheriff~~;

(c) Sell the ~~The property may be sold~~ to the highest bidder; or

(d) Release the ~~The property may be released~~ back to the taxpayer if that action is determined to be in the best interests of the state ~~Department~~.

(3) The manner and conditions of the sale of property seized ~~is~~ ~~shall be~~ governed by the following ~~guidelines~~:

(a) The sale will ~~may not~~ be conducted ~~in any manner other than~~ by public auction or by public sale under sealed bids. Information concerning time, place, manner, and conditions of the sale will ~~shall~~ be stated in the notice of sale.

(b) Items for sale will ~~shall~~ be offered by individual units, except ~~in cases~~ where similar merchandise may be sold in lots. However, the Department ~~The Executive Director or the Executive Director's designee~~ will sell ~~shall have the option of selling~~ the seized property in aggregate when it determines that ~~if this method~~ will yield a higher bid total than selling the items by individual units ~~is deemed to bring the highest bid~~.

(c) Adjournment of sale may not exceed one month. The ~~Any one of the~~ following reasons are ~~is~~ sufficient for adjournment of a sale:

1. Lack of sufficient bids;
2. Inclement weather;
3. Legal challenges to the bidding process;
4. The best interest of the state ~~department~~; or,

5. A well-founded and good faith belief, based on articulable facts, that collusion in bidding is occurring and is preventing competition or stifling bidding in violation of public policy. ~~If the Department~~ The Department's designee believes such a violation has occurred, it ~~will~~ may cancel all ~~or some of the~~ bid acceptances determined to be in violation of public policy ~~in this event.~~

(d) Payments related to seized property ~~must~~ shall be made by cash, ~~cashier's~~ cashiers check, certified check, or money order.

(e) Upon purchase of seized property when the bid is for \$5,000 or less, the payment ~~must~~ shall be made at the time of sale. When the highest bid exceeds \$5,000, a 20 percent ~~nonrefundable~~ non-refundable deposit ~~must~~ shall be made at time of sale, and the remaining payment ~~must~~ shall be made before 4:30 p.m. ~~on~~ of the next business day. The ~~nonrefundable~~ non-refundable deposit ~~must~~ shall be paid without exception to the Department after other costs are deducted.

(4) Any person whose property has been levied upon may pay the amount due, together with costs and expenses, ~~of the proceeding, if any,~~ to the sheriff ~~Department~~ at any time prior to the sale. Upon ~~and upon~~ such payment, the sheriff ~~Department~~ will appropriately advise the Department ~~Sheriff~~, will restore the such property to such person, and will ~~shall~~ cease all other proceedings in connection with the levy on the such property ~~from the date of such payment.~~

Rulemaking Specific Authority 72.011(2), 120.54(1), 198.08, 199.202, 202.26(3), 212.18(2), 213.06(1) FS. Law Implemented 56.27, 198.20, 198.22, 199.262, 201.16, 202.33(3), 202.36, 206.075, 206.97, 206.9835, 206.9915, 207.014, 211.125, 212.14, 212.15, 213.69, 213.73, 213.731, 213.732, 213.74, 213.75, 213.758, 220.827, 336.021, 336.025, 403.718(3)(a), 403.7185(3)(a), 443.1316, 538.11, 624.5092, 681.117 FS. History-New 7-1-88, Amended _____.

12-21.040 Satisfaction or Correction of Tax Warrants and Liens.

(1) Upon receipt of full payment for any warrant, execution, or judgment (~~Form DR-78~~) ~~filed in public records~~ for any tax administered by the Department, the Department will issue a satisfaction of ~~shall satisfy~~ the lien of record. The Department will record a Satisfaction and Release of Tax Lien ~~satisfaction shall be recorded~~ with the clerk of the circuit court in the county in which the original lien was filed and ~~shall also be recorded~~ in any other public record where the original warrant or a certified copy was recorded, if different from where the original warrant was recorded. The satisfaction of a judgment lien certificate will be accomplished by recording a Judgment Lien Amendment Statement with the Department of State indicating that the Judgment Lien Amendment Statement is a termination of the lien.

(2) The Department will record a Satisfaction and Release of Tax Lien ~~shall satisfy a lien of record~~ ~~filed~~ with the clerk of the court and ~~shall cancel any associated warrant or judgement filed in public records~~ within 30 days of receipt by the Department of payment in full. When payment in full has been tendered by cash, payment will be deemed to have been made when received by the Department. When payment in full has been tendered by certified check, cashier's check, or other guaranteed banking instrument, payment will be deemed to have been made when the instrument is received by the Department, unless cause arises for the Department to believe that the instrument may not be honored or has not been honored. When payment in full has been tendered by personal check, payment will be deemed to have been made when the Department confirms that the check has been deposited as collected funds in the State Treasury.

(3) When ~~The following circumstances apply to instances when~~ the Department has filed a warrant:

(a) If the liability is subsequently satisfied ~~discharged~~, the Department will ~~shall~~ file a

Satisfaction of the warrant;

(b) If no warrant should have been filed, the Department ~~will~~ ~~shall~~ file a Cancellation of the warrant and note therein that the original ~~warrant~~ was filed in error;

(c) If a warrant was justified, but ~~the filed warrant was~~ materially incorrect in some respect ~~as filed~~, the Department ~~will~~ ~~shall~~ file an ~~amended~~ ~~Amended~~ warrant, which ~~will~~ ~~shall~~ reference the original filing and the erroneous portion, and ~~will~~ ~~shall~~ retain the priority of the original ~~warrant~~.

~~(4) If the Department cancels a warrant or files an amended or modified warrant pursuant to subsection (3), the taxpayer may submit a written request that the Department provide a copy of such cancellation, amendment, or modification to a credit agency specified by the taxpayer in his or her request.~~

Rulemaking Specific Authority ~~120.54(1)~~, 198.08, 199.202, 202.26(3), 212.18(2), 213.06(1) FS.

Law Implemented 198.22, 199.262, 201.16, 202.33(3), 211.125(7), 211.33(7), 212.14, 212.15, 213.73, 213.732, 213.733, 213.758, 220.819, 220.827, 220.829, 336.021, 336.025,

403.718(3)(a), 403.7185(3)(a), 443.1316, 538.11, 624.5092, 681.117 FS. History-New 11-14-91,

Amended 6-16-93, _____.

~~12-21.050 Public Use Forms. The following forms are issued by the Department in its dealings with the public. These forms are incorporated by reference in this rule. Defaced copies of these forms, for purposes of example, may be obtained by written request directed to the Department of Revenue, Forms Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304.~~

Form Number	Title	Revision Date
(1) DR-78	Warrant	04/97
(2) DR-79	Execution	04/97
(3) DR-80	Instructions for Levy	11/92
(4) DR-81	Satisfaction and Release of Tax Lien	04/97

Rulemaking Specific Authority 213.06(1) FS. Law Implemented 120.54(1), 213.73, 213.74, 213.75 FS. History-New 8-10-92, Amended 3-31-99, Repealed_____.

PART II ADMINISTRATIVE GARNISHMENT FOR UNPAID TAXES

12-21.201 Scope.

~~(1)~~ This part explains the procedures that which will be used by the Department Executive Director of the Department or the Executive Director's designee, to implement the ~~statutory~~ authority granted in Section 213.67, F.S. These procedures enable the Department to identify and freeze the assets of any taxpayer who owes delinquent taxes, fees, surcharges, penalties, or interest, administrative fees, or costs of collection. These procedures also will be used to levy upon such assets, and collect the delinquent amount owed. The Department will freeze the assets of a delinquent taxpayer pursuant to Section 206.18(4), F.S., using the procedures established in this rule chapter.

~~(2) Any specific questions or requests for information from any party directly affected by a garnishment procedure shall be directed to the Department office that initiated the procedure.~~
Rulemaking Specific Authority ~~72.011(2)~~, 213.06(1) FS. Law Implemented 206.18(4), 213.67, 213.731, 443.1316 FS. History-New 6-16-93, Amended 3-31-99,_____.

12-21.202 Definitions. For the purposes of this part, the following terms and phrases will have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

(1) “Assets” means any personal property, credits, or debts, owned by or owed to a noncompliant taxpayer, excluding salaries and wages payable to a noncompliant taxpayer by a third party.

(2) “Custodian” means any person, including any business entity, who has control and/or possession of any assets owned by, or owed to, a taxpayer.

(3) “Department” means the Florida Department of Revenue, and includes its agents and employees.

(4) “Intangible personal property” means all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents, including, but not limited to:

(a) All stocks or shares of incorporated or unincorporated companies, business trusts, and mutual funds;

(b) All notes, bonds, and other obligations for the payment of money; or,

(c) Money, including United States legal tender, certificates of deposit, cashier's and certified checks, bills of exchange, drafts, the cash equivalent of annuities and life insurance policies, and similar instruments.

(5) “Noncompliant taxpayer” means any taxpayer against whom a warrant has been issued by the Department for nonpayment of an amount due pursuant to any revenue law enumerated in s. 213.05, F.S.

(6) “Personal property” means intangible personal property or tangible personal property.

~~(7) “Tangible personal property” means personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses.~~

~~(8) “Tax warrant” means any distress warrant or other warrant issued to secure payment of delinquent taxes.~~

~~(9) “Salaries or wages” means all remuneration for employment paid to a taxpayer, including commissions, bonuses, back pay awards, tips or gratuities received while performing services which constitute employment, and the cash value of all remuneration paid in any medium other than cash.~~

Rulemaking Specific Authority 72.011(2), 120.54(1), 213.06(1) FS. Law Implemented 213.67 FS. History-New 6-16-93, Repealed _____.

12-21.203 Notification to Custodians; Custodial Responsibilities.

(1) To initiate ~~a~~ this garnishment procedure, the Department will ~~send~~ prepare a Notice of Freeze (~~Form DR-44~~). This Notice shall be sent by registered mail, personal service, facsimile, electronic data interchange, use of the Internet, or by other electronic means to custodians exercising control or possession of a delinquent taxpayer’s assets. The following employees of the Department are authorized to initiate this administrative garnishment procedure:

~~(a) The Executive Director or the Deputy Executive Director;~~

~~(b) The General Counsel or Deputy General Counsel;~~

~~(c) The Senior Program Director, General Tax Administration;~~

~~(d) The Program Director, General Tax Administration; and~~

~~(e) Any of the following positions within the Compliance Enforcement Process, General Tax Administration:~~

1. ~~The Process Manager;~~
2. ~~Regional Managers;~~
3. ~~Service Center Managers; and~~
4. ~~Process Group Managers.~~

~~(f) Any of the following positions within the Taxpayer Services Process, General Tax Administration:~~

1. ~~The Process Manager;~~
2. ~~Revenue Administrator III; and~~
3. ~~Revenue Specialist Supervisor.~~

(2) The Notice of Freeze ~~notice will~~ shall state the Department's authority to initiate the garnishment procedure; specifically identify the delinquent ~~noncompliant~~ taxpayer subject to garnishment; specify the amount of tax, fee, surcharge, penalty, or interest, administrative fees, and costs of collection owed by the taxpayer; indicate the dates during which the freeze of assets is effective; specify the amount of the delinquent taxpayer's assets that ~~which~~ must be frozen by the custodian; and ~~fully~~ describe the custodian's responsibilities pursuant to Section 213.67, F.S., and this rule.

(3) The Notice of Freeze (~~Form DR-44~~) informs the custodian of the following ~~that~~:

(a) The custodian is prohibited from ~~disposing, transferring, or otherwise disposing of~~ returning to the noncompliant taxpayer or other party the specified partial amount or the entire amount of the delinquent ~~such~~ taxpayer's assets in the custodian's control or possession at the time of receipt of the Notice of Freeze, or any additional assets of which the custodian subsequently acquires control or possession, in any manner whatsoever, during the time period prescribed by ~~the this notice~~ Notice, unless written consent is given ~~authorized~~ by the

~~Department in writing;~~ The Department will notify each custodian that assets in excess of the amount stipulated in the notice, wherever held, are not subject to the freeze.

(b) The Notice of Freeze is effective as of the date of its receipt, and remains in effect until the Department consents to a transfer ~~or~~, disposition, ~~or return~~, or until sixty (60) days have elapsed from the date of its receipt. However, if the ~~delinquent noncompliant~~ taxpayer contests the intended levy in circuit court or under Chapter 120, F.S., within the time period specified under Section 213.67, F.S., the Notice of Freeze will remain in effect ~~effective~~ until a final resolution is achieved. ~~of the contest;~~

(c) If, during the time period prescribed by this ~~notice~~ Notice, a custodian makes any transfer or disposition of the assets required to be withheld, the custodian will be liable for any indebtedness owed to the ~~Department~~ department by the ~~delinquent noncompliant~~ taxpayer to the extent of the value of ~~the such~~ assets, if the state is unable to recover the indebtedness; solely by reason of the transfer or disposition.

(4) The Notice of Freeze informs the custodian that each ~~Each~~ custodian who receives a Notice of Freeze issued pursuant to this ~~rule~~ Rule must:

(a) Inform the Department in writing, within 5 days of the receipt of the notice, of those specific assets and their value attributable to the delinquent taxpayer ~~that which~~ the custodian controls, possesses, or is owed;

(b) Inform the Department in writing, within 5 days after coming into subsequent possession or control of assets attributable to the delinquent taxpayer; and

(c) Comply with the statutory prohibition against disposing, transferring, or releasing the amount of the ~~delinquent noncompliant~~ taxpayer's assets ~~that which~~ the Department specified in the Notice of Freeze or that subsequently come into possession or control of the custodian.

(5) Any financial institution receiving a Notice of Freeze issued pursuant to Section 213.67, F.S., and this rule will maintain a right of set-off for any transaction involving a debit card occurring on or before the date of receipt of such ~~notice~~ Notice.

(6) If, during the time period prescribed by this ~~notice~~ Notice, the ~~delinquent noncompliant~~ taxpayer satisfies the delinquent liability for taxes, fees, surcharges, penalties, and interest, administrative fees, or costs of collection, the Department will issue a Notice of Release (~~Form DR-44R, incorporated herein by reference, dated 10/98~~). ~~Defaced copies of this form may be obtained by written request to the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112.~~ Upon receipt of the Notice of Release, the custodian is no longer prohibited from ~~may transferring transfer, returning return, or disposing dispose~~ of any assets owned, controlled by, or owed to the taxpayer that are in the custodian's possession or control.

(7) The Department will record a warrant prior to initiating a garnishment procedure pursuant to this rule.

Rulemaking Specific Authority 72.011(2), 213.06(1) FS. Law Implemented 206.18(4), 213.67, 443.1316 FS. History-New 6-16-93, Amended 3-31-99, 6-28-00,_____.

12-21.204 Issuance of Notice of Intent to Levy; Procedures.

(1) Prior to levying against the assets of a ~~delinquent noncompliant~~ taxpayer for which a Notice of Freeze (~~Form DR-44~~) has been issued pursuant to Rule 12-21.203, F.A.C. this rule, the Department will ~~shall~~ send the delinquent such taxpayer, by certified or registered mail or hand-delivery, a Notice of Intent to Levy (~~Form DR-44I, incorporated herein by reference, dated 10/98~~). Thirty days or more before the Department may levy, a Notice of Intent to Levy will be

given in person or sent to the delinquent taxpayer's last known address. Defaced copies of this form may be obtained by written request to the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112. The notice This Notice informs the delinquent nonecompliant taxpayer that the Department intends to levy on the frozen assets held by custodians, as specified in the Notice of Freeze (~~Form DR-44~~) already issued to such custodians.

(2) The Notice of Intent to Levy (~~Form DR-44I~~) explains ~~shall explain~~ to the delinquent nonecompliant taxpayer:

(a) The provisions of Section 213.67, F.S., and this rule chapter regarding the levy and sale of property for collection of delinquent taxes, fees, surcharges, penalties, interest, administrative fees, and costs of collection;

(b) The administrative and judicial appeals available to the delinquent taxpayer, including ~~and~~ the procedures for pursuing such appeals; and

(c) Any alternatives available to the delinquent taxpayer that ~~which~~ will prevent the proposed levy.

Rulemaking Specific Authority 72.011(2), 213.06(1) FS. Law Implemented 213.67, 213.731, 443.1316 FS. History-New 6-16-93, Amended 3-31-99, _____.

12-21.205 Departmental Levy on Frozen Assets; Procedures.

(1)(a) If the delinquent nonecompliant taxpayer does not, within 21 days after the date of receipt of the Notice of Intent to Levy, pay the delinquent taxes, penalties, ~~and~~ interest, administrative fees, and costs of collection owed as referenced in the Notice of Intent to Levy, or bring lawful action to contest the Notice of Intent to Levy, the Department will levy upon any

assets controlled or possessed by the custodians.

(b) If the delinquent noncompliant taxpayer, within 21 days after the date of receipt of the Notice of Intent to Levy, files a lawful action contesting this intended levy pursuant to Chapter 120, F.S., or in circuit court, the Department will issue a Notice of Contested Intent to Levy to the custodian. (~~Form DR 44C, incorporated herein by reference, dated 10/98~~). ~~Defaced copies of this form may be obtained by written request to the Florida Department of Revenue, Taxpayer Services, Mail Stop 3 2000, 5050 West Tennessee Street, Tallahassee, Florida 32399 0112.~~ The Department will not proceed to levy on such frozen assets until there is a final resolution in its favor determination is issued.

(c) If the delinquent taxpayer contests the intended levy, the Notice of Freeze will remain in effect until there is a final resolution.

(2) The following procedures ~~will~~ govern the Department's issuance of a Notice of Levy: (~~Form DR 44L, incorporated herein by reference, dated 10/98~~). ~~Defaced copies of this form may be obtained by written request to the Florida Department of Revenue, Taxpayer Services, Mail Stop 3 2000, 5050 West Tennessee Street, Tallahassee, Florida 32399 0112.~~

(a) The Department will not issue a Notice of Levy until at least thirty (30) days after the Department has issued a Notice of Intent to Levy to the delinquent taxpayer ~~Freeze to custodians of a noncompliant taxpayer's assets.~~

(b) A Notice of Levy will be delivered by registered mail to those custodians who are currently subject to a Notice of Freeze. The Notice of Levy will designate the specific assets to be paid or transferred to the Department, and the manner in which such transfer should occur. Payments to the Department must be made by certified or cashier's check, made payable in U.S. funds to the Florida Department of Revenue.

~~(c) The following employees of the Department are authorized to sign the Notice of Levy (Form DR-44L) sent to a custodian:~~

- ~~1. The Executive Director;~~
- ~~2. The Deputy Executive Director;~~
- ~~3. The General Counsel or Deputy General Counsel;~~
- ~~4. The Senior Program Director, General Tax Administration;~~
- ~~5. The Program Director, General Tax Administration;~~
- ~~6. Any of the following positions within the Compliance Enforcement Process, General~~

~~Tax Administration:~~

- ~~a. The Process Manager;~~
- ~~b. Regional Managers;~~
- ~~e. Service Center Managers;~~
- ~~d. Process Group Managers; and~~
- ~~7. Any of the following positions within the Taxpayer Services Process, General Tax~~

~~Administration:~~

- ~~a. The Process Manager;~~
- ~~b. Revenue Administrator III; and~~
- ~~c. Revenue Specialist Supervisor.~~

~~(c)(d) A Notice of Levy will apply:~~

1. To any credits, other personal property, or debts of the delinquent taxpayer held by a custodian as of the date the notice ~~Notice~~ is received by such custodian that ~~which~~ are not, at the time of the initial Notice of Freeze (~~Form DR-44~~), subject to an attachment, garnishment, or execution issued through a judicial process; and

2. To any credits, other personal property, or debts of the delinquent taxpayer of which the custodian subsequently acquires control or possession during the time period prescribed by the Notice of Freeze (~~Form DR-44~~).

(3)(a) The assets ~~tangible personal property~~ of any delinquent noncompliant taxpayer that ~~which have~~ ~~has~~ been garnished by the Department are ~~is~~ subject to levy and sale in the same manner as provided in Section 213.69, F.S., and ~~Part I~~ of this rule chapter.

(b) The Department will ~~shall~~ return to the delinquent noncompliant taxpayer any surplus sale proceeds in its possession remaining after all ~~costs~~, taxes, fees, surcharges, penalties, and interest, administrative fees, and costs of collection have been deducted from such sale.

(4) The Department must bring an action in circuit court to obtain an order compelling compliance with any notice issued under the authority of Section 213.67, F.S.

Rulemaking Specific Authority 72.011(2); 213.06(1) FS. Law Implemented 213.67, 213.731, 443.1316 FS. History-New 6-16-93, Amended 3-31-99,_____.

12-21.208 Withholding of Vendor Payments.

(1) This rule explains the procedures used by the Department to implement the authority granted in Section 213.67(9), F.S., that requires the Department to provide the Chief Financial Officer a listing of taxpayers for which warrants are outstanding and for which the Department is authorized to levy upon certain payments.

(2) The Department will request that payments to any person, as defined in Section 212.02, F.S., who provides commodities or services to the State, leases real property to the State, or constructs a public building or public work for the State be withheld by the Chief Financial Officer when such person has an outstanding warrant.

(3) The Department will advise the Chief Financial Officer to release payment to a vendor with an outstanding warrant when the vendor is in compliance with a stipulated payment agreement with the Department.

(4) The Department will advise the Chief Financial Officer of the amount of any funds due in excess of the amount of the outstanding warrant that are not subject to withholding.

Rulemaking Authority 213.06(1) FS. Law Implemented 213.67(9) FS. History-New _____.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
REPEALING RULE 12A-1.090

SUMMARY OF PROPOSED RULE

The proposed repeal of Rule 12A-1.090, F.A.C. (Tax Liens, Garnishment and Jeopardy Assessments), removes from Rule Chapter 12A-1, F.A.C., Sales and Use Tax, all provisions regarding tax liens, garnishment, and jeopardy assessments.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed repeal of Rule 12A-1.090, F.A.C. (Tax Liens, Garnishment and Jeopardy Assessments), is necessary to remove provisions regarding tax liens, garnishment, and jeopardy assessments from the provisions of Chapter 12A-1, F.A.C., that will be updated and provided in Rule Chapter 12-21, F.A.C. (Warrants, Jeopardy, and Post-Warrant Collections), as amended.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

No Notice of Proposed Rule Development is required for the proposed repeal of a rule.

SUMMARY OF PUBLIC HEARING

HELD ON SEPTEMBER 24, 2013

The Governor and Cabinet, sitting as head of the Department of Revenue, met on September 24, 2013, and approved the publication of the Notice of Proposed Rule for changes to Rule 12A-1.090, F.A.C. (Tax Liens, Garnishment and Jeopardy Assessments). A notice for the public hearing was published in the Florida Administrative Register on September 13, 2013 (Vol. 39, No. 179, pp. 4604 - 4607).

SUMMARY OF RULE HEARING

NOVEMBER 13, 2013

The proposed repeal of Rule 12A-1.090, F.A.C. (Tax Liens, Garnishment and Jeopardy Assessments), was noticed for a rule hearing in the Florida Administrative Register on October 21, 2013 (Vol. 39, No. 205, pp. 5260-5261). A rule hearing was held on November 13, 2013, in Room 1220, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one from the public was in attendance. No written comments were received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
REPEALING RULE 12A-1.090

12A-1.090 Tax Liens, Garnishment and Jeopardy Assessments.

~~(1) If not paid as specified therein, the tax imposed by Chapter 212, F.S., shall become delinquent for each month upon the twenty first day of the succeeding month, except as provided in Rule 12A-1.056(1), F.A.C.~~

~~(a) In addition to criminal sanctions, when any tax becomes delinquent or if the department believes that the collection of any tax or any amount of tax required to be collected and paid to the State or if any determination will be jeopardized by delay, it shall be the duty of the Department of Revenue to issue a warrant for the full amount of tax due or estimated to be due, together with the interest, penalties and cost of collection. Such warrant shall be directed to all and singular the sheriffs of the State of Florida and shall be recorded with the Clerk of the Circuit Court in the county where the delinquent taxpayer's real or personal property in such county in the same manner as a judgment duly docketed and recorded. Such liens are enforceable for only five (5) years, which period runs from the date of the assessment or delinquency whichever is later, unless the time period is tolled for some reason. The department is not obligated to satisfy or cancel any outstanding lien of record where no payment has been made or the time period has expired and the department will not refuse to accept payment on a lien after the five (5) year time period has expired if the taxpayer tenders payment for release of any such~~

~~unenforceable lien. The sheriff upon notice by the department, shall proceed upon all enforceable liens in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgment of the circuit court, and he shall be entitled to the same fees for his services in executing the warrant. Upon payment of such execution, warrant or judgment, the Department of Revenue is hereby specifically authorized and directed to satisfy the lien of record within thirty (30) days.~~

~~(b) In making a determination that the collection of any amount of tax required to be collected and paid will be jeopardized by delay, the department may consider any of the following:~~

- ~~1. The prior history, if any, of the taxpayer's compliance or noncompliance with the provision of the law;~~
- ~~2. The type of business, including the transient or non-transient nature of the business;~~
- ~~3. The liquidity of assets;~~
- ~~4. The mobility of assets;~~
- ~~5. The pending sale or transfer of title of assets; or~~
- ~~6. The financial status of the person or dealer owing the tax, including existence of money judgments.~~

~~(2) In addition to the issuance of a distress warrant and tax lien provided by Chapter 212, F.S., Section 212.07(3), F.S., provides that any dealer who shall fail, neglect or refuse to collect the tax therein provided, either himself or through his agents, or employees, shall, in addition to the penalty of being liable for and paying the tax himself, be guilty of a misdemeanor, and upon conviction shall be punished as provided by law.~~

~~(3) When any dealer is delinquent in the payment of tax, Section 212.10(3), F.S.,~~

~~authorizes the Department of Revenue to give notice by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such dealer, or to all persons owing any debts to such dealer at the time of receipt by them of such notice. All persons so notified shall, within five days after receipt of such notice, advise the Department of Revenue in writing of any subsequent credits or other personal property belonging to such dealer or any debts incurred and owing to such dealer which may come within their possession or under their control during the time prescribed by the notice. After receiving the notice, the persons notified shall neither transfer nor make any other disposition of the credits, other personal property or debts in their possession or under their control at the time they receive the notice or at any time during the time prescribed by the notice until the Department of Revenue consents to the transfer or disposition or until sixty days elapse after the receipt of the notice. Any person so notified who shall make any transfer or disposition of the credits, other property or debts required to be withheld hereunder, shall be liable to the State for any indebtedness to the extent of the value of the property or amount of the debts transferred, if solely by reason of the transfer or other disposition the State is unable to recover the indebtedness of the person named in the notice. All such credits or other personal property or debts are subject to garnishment by the Department of Revenue to satisfy the delinquent tax.~~

~~(4) The taxes imposed by Chapter 212, F.S., shall become state funds at the moment of collection. Any person who, with intent to unlawfully deprive or defraud the State of its monies or the use or benefit thereof, fails to remit taxes collected pursuant to this chapter is guilty of theft of State funds, punishable as provided under Section 212.15(2), F.S.~~

Rulemaking Authority 212.17(6), 212.18(2), 213.06 FS. Law Implemented 95.091, 212.04(4), (6), (7), 212.07(3), 212.10(3), 212.14(1), (6), 212.15(1), (2), (3), (4), 212.151, 213.67(2),

213.756 FS. History-Revised 10-7-68, 6-16-72, Amended 8-23-77, 6-3-80, 4-29-85, Formerly
12A-1.90, Repealed.