

AGENDA
FLORIDA DEPARTMENT OF REVENUE

Meeting Material Available on the web at:
<http://dor.myflorida.com/dor/opengovt/meetings.html>

MEMBERS

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

May 3, 2011

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

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

ITEM	SUBJECT	RECOMMENDATION
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| <p>1. Respectfully request approval and authority to publish Notice of Proposed Rule in the Florida Administrative Weekly for the following rules:</p> <p>Refunds of Tax Paid on Fuel Used for Pumping Off Cargo: propose amendment of the rules relating to the exemption provided for diesel fuel used in motor vehicles to unload bulk cargo. [Rule 12B-5.130, Florida Administrative Code (F.A.C.) and Form DR-309639, incorporated by reference in Rule 12B-5.150, F.A.C.]</p> <p>Trade-ins: propose amendment of the rules relating to trade-ins and trade and cash discounts. [Rule 12A-1.018 and Rule 12A-1.074, F.A.C.]</p> <p>Obsolete Example: propose amendment of the rule relating to adjustment of federal income for Florida corporate income tax. [Rule 12C-1.013, F.A.C.]</p> | <p>(ATTACHMENT 1)</p> | <p>RECOMMEND APPROVAL</p> |
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| <p>2. Respectfully request approval and authority to publish Notice of Proposed Rule in the Florida Administrative Weekly for the following rule:</p> <p>Value Adjustment board; Maximum 4 Hour Wait for a Hearing: propose amendment of the rule relating to procedures used by value adjustment boards, special magistrates, and taxpayers relating to property tax. [Rule 12D-9.019, F.A.C.]</p> | <p>(ATTACHMENT 2)</p> | <p>RECOMMEND APPROVAL</p> |
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3. Respectfully request adoption and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes, for the following rules:

Florida Tax Credit Scholarship Program - tax credits: propose permanent rules for the administration of credits under the Florida Tax Credit Scholarship Program.

[Rule Chapter 12-29, Rule 12B-8.001, Rule 12C-1.0186, Rule 12C-1.0187, and Rule 12C-1.051, Florida Administrative Code (F.A.C.)]

Manufacturing and Spaceport Investment Incentive Program - tax refunds: propose creation of a rule for the administration of tax refunds under the Manufacturing and Spaceport Investment Incentive Program. [Rule 12A-1.0143, F.A.C.]

Germicides used for sewage treatment - tax exemptions: propose amendment of the rule relating to the exemption provided for chemicals used to treat sewage. [Rule 12A-1.011, F.A.C.]

(ATTACHMENT 3)

RECOMMEND APPROVAL

4. Respectfully request adoption and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes, for the following rule:

Red light camera penalties electronic remittance requirements: propose amendment of rules relating to the remittance of red light camera penalties collected by counties and municipalities and the electronic remittance of fees and charges collected by Clerks of the Court. [Rule Chapter 12-28 and Rule 12-24.011, F.A.C.]

(ATTACHMENT 4)

RECOMMEND APPROVAL

May 3, 2011

MEMORANDUM

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

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

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

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

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

SUBJECT: Requesting Approval to Hold Public Hearing on Proposed Rules:

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

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

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

What is the Department Requesting? Section 120.54(3)(a), F.S., requires the Department to obtain Cabinet approval to hold public hearings for the development of proposed rules. The Department therefore requests approval to publish Notices of Proposed Rule in the Florida Administrative Weekly for the following proposed rules:

ATTACHMENT #1

Memorandum

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

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

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

Refunds of Tax Paid on Fuel Used for Pumping Off Cargo

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

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

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

Were comments received from external parties?: A rule development workshop was held on February 9, 2009, to receive public comment and to gather information on vehicles that unload bulk cargo by pumping. The Department reviewed the information provided by the industry, including the percentages of fuel used for pumping off bulk cargo for various types of qualified equipment that are used by other states for tax refund purposes. Using this information the Department computed a percentage of fuel used for pumping off bulk cargo for each type of qualified vehicle. These proposed percentages were presented at a rule development workshop held on April 4, 2011. An industry representative attended the workshop to support the proposed rule and proposed refund application.

Trade-Ins

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

Memorandum

May 3, 2011

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

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

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

Obsolete Example

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

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

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

Attached are copies of:

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

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-5, FLORIDA ADMINISTRATIVE CODE
TAX ON MOTOR FUELS, DIESEL FUELS, ALTERNATIVE FUELS,
AVIATION FUELS, AND POLLUTANTS
AMENDING RULES 12B-5.130 AND 12B-5.150

SUMMARY OF PROPOSED RULE

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

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

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

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON FEBRUARY 5, 2009

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

PARTIES ATTENDING

For the Department of
Revenue

LARRY GREEN, Workshop Moderator
MARK ZYCH, Director, Technical Assistance and
Dispute Resolution
RICK McCLURE, Assistant General Counsel
LEE GONZALEZ, Revenue Program Administrator
GARY GRAY, Revenue Program Administrator
RONALD GAY, Tax Law Specialist

LYNWOOD TAYLOR, Tax Law Specialist

From the Public

MICHAEL BRADFIELD, NECS

WRITTEN COMMENTS

MICHAEL BRADFIELD, NECS

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

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

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

that have these types of trucks.

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

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

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

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

specific type of pump.

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

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

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

SUMMARY OF DEVELOPMENT OF PROPOSED RULE TEXT:

After verifying the information submitted to the Department, an average percentage of fuel consumed for purposes of unloading bulk cargo, by each type of vehicle, was computed for each type of qualified vehicle, based on the average of the percentages used by all states that grant refunds on fuel consumed for unloading bulk cargo. The proposed percentages for each type of vehicle are included in the proposed revisions to Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes. The proposed form provides information regarding the type of vehicle and requires the applicant to include information regarding the vehicle, the purchases of undyed diesel fuel consumed in the vehicle, and the amount of tax refund due using the proposed percentage of the fuel consumed

for a specific type of vehicle.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON APRIL 4, 2011

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

PARTIES ATTENDING

For the Department
of Revenue

TERRY BRANCH, Tax Law Specialist, Technical Assistance and Dispute Resolution, Workshop Moderator
FRENCH BROWN, Deputy Director, Technical Assistance and Dispute Resolution
DEBRA GIFFORD, Tax Law Specialist, Technical Assistance and Dispute Resolution
RONALD GAY, Tax Law Specialist, Technical Assistance and Dispute Resolution

For the Public

MICHAEL BRADFIELD, NECS

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

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

MOTOR FUELS, DIESEL FUELS, ALTERNATIVE FUELS, AVIATION FUELS, AND
POLLUTANTS

RULE NO: RULE TITLE:

12B-5.130 Refunds

12B-5.150 Public Use Forms

PURPOSE AND EFFECT: Section 206.8745(6), F.S., grants a refund, as provided by rule, for undyed tax-paid diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping when the power take-off unit or engine exhaust is mounted on a motor vehicle that has no separate fuel tank. The purpose of this rulemaking is to provide the standards for granting refunds of the tax paid on undyed diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping using a hydraulic, pneumatic, or any other kind of pump. When in effect, proposed Rule 12B-5.130, F.A.C. (Refunds), and the proposed revisions to Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, incorporated by reference in Rule 12B-5.150, F.A.C. (Public Use Forms), will provide how a refund of tax paid on diesel fuel used by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping will be granted by the Department.

SUMMARY: The proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), and the proposed revisions to Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, incorporated by reference in Rule 12B-5.150, F.A.C. (Public Use Forms), provide: (1) the types of vehicles that qualify for the refund of tax paid on

diesel fuel pursuant to subsection 206.8745(6), F.S.; (2) the information that will be required for each qualified vehicle when submitting Form DR-309639 to the Department; (3) the qualified vehicle's percentage of fuel consumed for purposes of unloading bulk cargo by pumping; (4) how to determine the gallons of undyed diesel fuel that are eligible for refund; and (5) how to determine the amount of tax refund due.

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

RULEMAKING AUTHORITY: 206.14(1), 206.485(1), 206.59(1), 213.06(1), 213.755(8), 526.206 FS.

LAW IMPLEMENTED: 119.071(5), 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.06, 206.095, 206.11, 206.404, 206.41(4), (5), 206.43(5), (6), 206.44, 206.485, 206.64, 206.86, 206.874, 206.8745, 206.877, 206.90, 206.91, 206.92, 206.97, 206.9835, 206.9865, 206.9931, 206.9942, 206.9943, 212.0501, 213.255, 213.755, 526.203 FS.

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

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

PLACE: [To be determined upon approval.]

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850) 617-8346. Persons with hearing or speech

impairments may contact the Department by using the Florida Relay Service, which can be reached at (800) 955-8770 (Voice) and (800) 955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ronald Gay, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-6745.

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-5, FLORIDA ADMINISTRATIVE CODE
MOTOR FUELS, DIESEL FUELS, ALTERNATIVE FUELS,
AVIATION FUELS AND POLLUTANTS
AMENDING RULES 12B-5.130 AND 12B-5.150

PART I

TAX ON MOTOR AND DIESEL FUEL

12B-5.130 Refunds.

(1) No change.

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

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

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

to the qualified applicant.

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

(b) through (c) No change.

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

2. No change.

(e) No change.

(3) through (5) No change.

Rulemaking Authority 206.14(1), 206.59(1), 213.06(1) FS. Law Implemented 206.41(4), (5), 206.43(5), (6), 206.64, 206.8745, 206.97 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 1-27-09, 6-1-09, _____.

Cross Reference – Rules 12A-1.059 and 12A-1.0641, F.A.C.

12B-5.150 Public Use Forms.

(1)(a) The following public use forms and instructions are utilized by the Department and are hereby incorporated by reference in this rule.

(b) No change.

Form Number	Title	Effective Date
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(2) through (36) No change.

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

___ ~~01/11~~

(38) through (41) No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 213.06(1), 213.755(8), 526.206 FS.

Law Implemented 119.071(5), 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.06, 206.095, 206.11, 206.404, 206.41, 206.43, 206.44, 206.485, 206.86, 206.874, 206.8745, 206.877, 206.90, 206.91, 206.92, 206.9835, 206.9865, 206.9931, 206.9942, 206.9943, 212.0501, 213.255, 213.755, 526.203 FS. History—New 11-21-96, Amended 10-27-98, 5-1-06, 4-16-07, 1-1-08, 1-27-09, 4-14-09, 6-1-09, 6-1-09(5), 1-11-10, 7-28-10, 1-12-11,_____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Ronald Gay, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-6745.

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

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on December 12, 2008 (Vol. 34, No. 52, p. 6416). A rule development workshop was conducted on February 9, 2009, and comments were received. A second Notice of Proposed Rule Development was published in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, p. 662). A rule development workshop was conducted on April 4, 2011. Comments were received from the public in support of the proposed rule amendments.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULES 12A-1.018 AND 12A-1.074

SUMMARY OF PROPOSED RULES

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

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

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

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

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

Gamestop, Inc.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON APRIL 4, 2011

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

PARTIES ATTENDING

For the Department
of Revenue

TERRY BRANCH, Tax Law Specialist, Technical Assistance and Dispute Resolution, Workshop Moderator
FRENCH BROWN, Deputy Director, Technical Assistance and Dispute Resolution
DEBRA GIFFORD, Tax Law Specialist, Technical Assistance and Dispute Resolution
RONALD GAY, Tax Law Specialist, Technical Assistance and Dispute Resolution

For the Public

MICHAEL BRADFIELD, NECS

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE NO: RULE TITLE:

12A-1.018 Trade and Cash Discounts

12A-1.074 Trade-Ins

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

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

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

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

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

RULEMAKING AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.02(15), (16), 212.07(2), (3), 212.09, 212.12(9) FS.

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

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

PLACE: [To be determined upon approval.]

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850) 617-8346. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800) 955-8770 (Voice) and (800) 955-8771 (TDD).

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

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULES 12A-1.018 AND 12A-1.074

12A-1.018 Trade and Cash Discounts.

(1) No change.

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

(3) through (4) No change.

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

12A-1.074 Trade-Ins.

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

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

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

(3) No change.

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

NAME OF PERSON ORIGINATING PROPOSED RULES: French Brown, Deputy Director, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-6309.

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

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 661-662). No comments were received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
AMENDING RULE 12C-1.013

SUMMARY OF PROPOSED RULE

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

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

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

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON APRIL 4, 2011

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

PARTIES ATTENDING

For the Department
of Revenue

TERRY BRANCH, Tax Law Specialist, Technical Assistance and Dispute Resolution, Workshop Moderator
FRENCH BROWN, Deputy Director, Technical Assistance and Dispute Resolution
DEBRA GIFFORD, Tax Law Specialist, Technical Assistance and Dispute Resolution
RONALD GAY, Tax Law Specialist, Technical Assistance and Dispute Resolution

For the Public

MICHAEL BRADFIELD, NECS

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

CORPORATE INCOME TAX

RULE NO: RULE TITLE:

12C-1.013 Adjusted Federal Income Defined

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

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

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

RULEMAKING AUTHORITY: 213.06(1), 220.51 FS.

LAW IMPLEMENTED: 220.13 FS.

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

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

PLACE: [To be determined upon approval.]

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850) 617-8346. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800) 955-8770 (Voice) and (800) 955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Debra Gifford, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-6752.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
AMENDING RULE 12C-1.013

12C-1.013 Adjusted Federal Income Defined.

(1) through (4) No change.

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

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

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

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

(6) through (21) No change.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Debra Gifford, Tax Law Specialist,
Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443,
Tallahassee, Florida 32314-7443, telephone (850) 717-6752.

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

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of
Proposed Rule Development was published in the Florida Administrative Weekly on March 18,
2011 (Vol. 37, No. 11, pp. 662 - 663). No comments were received by the Department.



Executive Director
Lisa Vickers

May 3, 2011

MEMORANDUM

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

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

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

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

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

SUBJECT: Requesting Approval to Hold Public Hearing on Proposed Rule:

- Value Adjustment Board; Maximum 4 Hour Wait for a Hearing

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

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

What is the Department Requesting?: Section 120.54(3)(a), F.S., requires the Department to obtain Cabinet approval to hold public hearings for the development of a proposed rule. The Department therefore requests approval to publish a Notice of Proposed Rule in the Florida Administrative Weekly for proposed Rule 12D-9.019, F.A.C. (*Scheduling and Notice of a Hearing*).

ATTACHMENT #2

Child Support Enforcement – Ann Coffin, Director • General Tax Administration – Jim Evers, Director
Property Tax Oversight – James McAdams, Director • Information Services – Tony Powell, Director

www.myflorida.com/dor
Tallahassee, Florida 32399-0100

Value Adjustment Board; Maximum 4 Hour Wait for a Hearing

Why is the proposed rule necessary?: Chapter 2008-197, L.O.F., requires the Department to adopt uniform procedures to be used by value adjustment boards, special magistrates, and taxpayers in hearings before the boards. Rule 12D-9.019(7)(b), F.A.C., was promulgated on March 30, 2010, to adopt the required procedures. The Department received an objection from the Joint Administrative Committee (JAPC) dated April 5, 2011, on this Rule and is amending the Rule in response to that objection.

What does this proposed rule do?: The Rule currently states that a petitioner appearing before a value adjustment board is not required to wait more than a reasonable amount of time to be heard. Section 194.032(2), F.S., gives a maximum wait time of four hours before the petitioner may request to be heard immediately. Based on the JAPC objection, the proposed amendment to the Rule provides that a “reasonable time shall not exceed four hours.”

Were comments received from external parties?: During initial promulgation of the Rule, three public meetings and numerous workshops were held. Section 120.545(3), F.S., provides that a Notice of Rule Development and a rule workshop are not required when a JAPC objection to a rule is received. Accordingly, following the receipt of the JAPC objection, a proposed amendment to the Rule was prepared, and the Department immediately requested the right to post a Notice of Proposed Rule. No comments have been received from the public concerning the JAPC objection. The Department anticipates that it may receive comments from the public hearing and in response to correspondence sent to interested parties.

Attached are copies of:

- Summary of the proposed rule, which include:
 - Statements of facts and circumstances justifying the rule; and
 - Federal comparison statement.
- Notices of Proposed Rule
- Rule text
- JAPC Objection Correspondence

STATE OF FLORIDA
DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT
CHAPTER 12D-9, FLORIDA ADMINISTRATIVE CODE
AMENDING RULE 12D-9.019(7)(b)

SUMMARY OF PROPOSED RULES

In response to the objection to Rule 12D-9.019(7)(b), F.A.C., as filed by the Joint Administrative Procedures Committee of the Florida Legislature, the Department is amending the rule to reflect the statutory language in s. 194.032(2), F.S., to address the Committee objections.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

Rule 12D-9.019(7)(b), F.A.C. (Scheduling and Notice of a Hearing), provides a maximum time frame for a petitioner waiting for a hearing before the Value Adjustment Board. The purpose of the proposed amendment to this rule is to clarify the length of “a reasonable time” to reflect the stated maximum time limit of four hours in s. 194.032(2), F.S.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

In response to the Joint Administrative Procedures Committee objection to Rule 12D-9.019(7)(b), F.A.C., the Department did not hold a rule development workshop. According to s. 120.545(3), F.S., a Notice of Rule Development does not have to be posted in the Florida Administrative Weekly and a workshop does not have to be held.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

PROPERTY TAX OVERSIGHT PROGRAM

RULE NO: RULE TITLE:

12D-9.019 Scheduling and Notice of a Hearing

PURPOSE AND EFFECT: Rule 12D-9.019(7)(b), F.A.C. (Scheduling and Notice of a Hearing), provides a maximum time frame for a petitioner waiting for a hearing before the Value Adjustment Board. The purpose of the proposed amendment to this rule is to clarify the length of “a reasonable time” to reflect the stated maximum time limit of four hours in s. 194.032(2), F.S.

SUMMARY: In response to the objection to Rule 12D-9.019(7)(b), F.A.C., as filed by the Joint Administrative Procedures Committee of the Florida Legislature, the Department is amending the rule to reflect the statutory language in s. 194.032(2), F.S., to address the Committee objections.

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

RULEMAKING AUTHORITY: 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS.

LAW IMPLEMENTED: 194.011, 194.015, 194.032, 194.034, 195.022, 213.05 FS.

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

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

PLACE: [To be determined upon approval.]

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Janice Forrester at (850) 617-8886. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800) 955-8770 (Voice) and (800) 955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Janice Forrester, Tax Law Specialist, Property Tax Oversight Program, Department of Revenue, P.O. Box 3000, Tallahassee, Florida 32315-3000, telephone 850-617-8886, ForrestJ@dor.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT PROGRAM
CHAPTER 12D-9, FLORIDA ADMINISTRATIVE CODE
AMENDING RULE 12D-9.019

12D-9.019 Scheduling and Notice of a Hearing.

(1) – (6) No change.

(7)(a) No change.

(b) In no event shall a petitioner be required to wait more than a reasonable time from the scheduled time to be heard. A reasonable time shall not exceed four hours. The board clerk is authorized to find that a reasonable time has elapsed based on other commitments, appointments or hearings of the petitioner, lateness in the day, and other hearings waiting to be heard earlier than the petitioner’s hearing with the board or special magistrate. If his or her petition has not been heard within a reasonable time, the petitioner may request to be heard immediately. If the board clerk finds a reasonable time has elapsed and petitioner is not heard, the board clerk shall find good cause is present and shall reschedule the petitioner’s hearing.

(c) No change.

(8) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 195.022, 213.05 FS. History-New 03/30/2010, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULES: Howard Moyes, Deputy Director, Property Tax Oversight Program, Department of Revenue, P.O. Box 3000, Tallahassee, Florida 32315-3000, telephone 850-617-8850.

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

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: According to s. 120.545(3) F.S., a Notice of Proposed Rule Development is not required to be published in the Florida Administrative Weekly before going before the Governor and Cabinet to request approval to publish the Notice of Proposed Rule.



Executive Director
Lisa Vickers

May 3, 2011

MEMORANDUM

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

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

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

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

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

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

- Florida Tax Credit Scholarship Program
- Manufacturing and Spaceport Investment Incentive Program
- Germicides used for sewage treatment

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

The Department has reviewed these proposed rules for compliance with HB 1565. The proposed rules will not 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.:

ATTACHMENT #3

Child Support Enforcement – *Ann Coffin, Director* • General Tax Administration – *Jim Evers, Director*
Property Tax Oversight – *James McAdams, Director* • Information Services – *Tony Powell, Director*

www.myflorida.com/dor
Tallahassee, Florida 32399-0100

Memorandum

May 3, 2011

Page 2

Florida Tax Scholarship Program: Rule Chapter 12-29, F.A.C. (*Multitax Credits*), Rule 12B-8.001, F.A.C. (*Premium Tax; Rate and Computation*), Rule 12C-1.086, F.A.C. (*Credit for Florida Alternative Minimum Tax*), Rule 12C-1.0187, F.A.C. (*Credits for Contributions to Nonprofit Funding Organizations*), and Rule 12C-1.051, F.A.C. (*Forms*).

Manufacturing and Spaceport Investment Incentive Program: Rule 12A-1.0143, F.A.C. (*Manufacturing and Spaceport Investment Incentive Program Tax Refunds*)

Germicides used for sewage treatment: Rule 12A-1.011, F.A.C. (*Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice*).

Florida Tax Credit Scholarship Program

Why are these proposed rules necessary?: Section 1002.395(13), F.S., requires the Department to adopt rules to administer this program.

What do these proposed rules do?: The Department's proposal provides permanent consolidated rules for the administration of tax credits available to taxpayers who make contributions to nonprofit scholarship funding organizations. Credits were previously allowed against corporate income tax and insurance premium tax. The 2010 Legislature expanded the program to allow certain taxpayers credits against sales and use tax and severance tax. Consolidation of the rules into one chapter will ease compliance and administration of the program. The proposed rules also update reference to the program in existing rules on the alternative minimum tax and repeal repetitive or obsolete rules and forms in existing rules on the alternative minimum tax and the insurance premium tax.

Were comments received from external parties?: A rule workshop was held on October 11, 2010. Changes to the proposed rule were made in response to public comments. On February 22, 2011, the Governor and Cabinet approved the Department's request to conduct a hearing on these proposed rule changes. A rule hearing was held on April 11, 2011. No comments were received at the public hearing on these proposals.

Manufacturing and Spaceport Investment Incentive Program

Why is this proposed rule necessary?: Section 288.1083(6), F.S., requires the Department to prescribe a form to be used by businesses seeking a refund under this program. The proposed rule explains the requirements to be followed by businesses seeking a refund and instructs businesses to use the Department's existing refund application.

What does this proposed rule do?: The proposed rule sets forth the procedures by which an eligible business may obtain a refund under the Manufacturing and Spaceport Investment Incentive Program. The program authorizes a refund of sales and use tax paid on the purchase of certain equipment, upon certified by the Office of Tourism, Trade, and Economic Development.

A tax refund is provided for sales and use tax paid on eligible equipment purchased and placed in service during state fiscal years 2010-2011 and 2011-2012, when those purchases exceed the total cost of eligible equipment purchased and placed in service during the business's 2008 tax year.

Were comments received from external parties?: A rule workshop was held on October 11, 2010. No comments were received at the workshop. On February 22, 2011, the Governor and Cabinet approved the Department's request to conduct a hearing on these proposed rule changes. A rule hearing was held on April 11, 2011. No comments were received from the public on these proposals.

Germicides used for sewage treatment

Why is this proposed rule necessary?: An amendment to the current rule is needed to reinstate the exemption language in place since 1962, for germicides used to treat sewage. This exemption language was inadvertently omitted in amendments to Rule 12A-1.011, F.A.C., made in 2010.

What does this proposed rule do?: The amendment to the current rule provides that germicides used in the treatment of sewage are exempt from sales and use tax.

Were comments received from external parties?: After being notified by industry members that the exemption language was omitted from the amended rule, the Department informed the industry that the exemption continued to apply, and engaged in this rulemaking to correct the omission. No request was received by the Department to hold the scheduled rule workshop on January 10, 2011, for this rule. On February 22, 2011, the Governor and Cabinet approved the Department's request to conduct a hearing on these proposed rule changes. A rule hearing was held on April 11, 2011. No comments were received from the public on these proposals.

Attached are copies of:

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

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-29, FLORIDA ADMINISTRATIVE CODE
MULTITAX CREDITS
CREATING RULES 12-29.001 THROUGH 12-29.003

SUMMARY OF PROPOSED RULES

Proposed Rule Chapter 12-29, F.A.C. (Multitax Credits), provides for the administration of tax credit programs that authorize eligible taxpayers tax credits against more than one tax imposed under Florida law.

Proposed Rule 12-29.001, F.A.C. (Scope), provides that Rule Chapter 12-29, F.A.C., sets forth the rules to be used in the administration of tax credits for contributions made to nonprofit scholarship funding organizations under Section 1002.395, F.S., Florida Tax Credit Scholarship Program.

Proposed Rule 12-29.002, F.A.C. (Florida Tax Credit Scholarship Program; Participation; Allocation; Carryforward; Rescindment): (1) provides the taxpayers eligible to participate in the Florida Tax Credit Scholarship Program and when those taxpayers are authorized under Chapter 2010-24, L.O.F., to participate in the Program; (2) requires eligible taxpayers to apply on-line, using the Department's website, or to file Form DR-116000, Application for Tax Credit Contributions to Nonprofit Scholarship Funding Organizations, with the Department, to receive a credit allocation from the tax cap authorized by the law; (3) establishes the procedures the Department will use to notify an applicant of the taxpayer's credit allocation; (4) establishes the procedures for claiming the credit allocation as a tax credit on a tax return; (5) provides that a

contribution to an eligible nonprofit scholarship funding organization must be made by an eligible taxpayer prior to taking a tax credit on a tax return; (6) establishes procedures for taxpayers to carry forward a tax credit for a period of up to three years when a taxpayer's tax liability is insufficient to take the full amount of the tax credit; and (7) establishes procedures for taxpayers who are unable to use a credit allocation to apply on-line with the Department or to submit Form DR-116100, Application for Rescindment of Tax Credit Allocation to Nonprofit Scholarship Funding Organizations, to rescind that credit and when those funds are eligible to other taxpayers for that state fiscal year.

Proposed Rule 12-29.003, F.A.C. (Florida Tax Credit Scholarship Program; Applications), adopts, by reference, applications used by the Department in the administration of the Florida Tax Credit Scholarship Program and provides how to obtain copies of those applications.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The Florida Tax Credit Scholarship Program, as amended by Chapter 2010-24, L.O.F., allows taxpayers to receive a credit allocation for contributions made to nonprofit scholarship funding organizations. The referenced law expands the tax credits against corporate income tax and insurance premium tax, transferring Section 220.187, F.S., to new Section 1002.395, F.S., creating Sections 211.0251, 212.1831, 220.1875, and 561.1211, F.S., and amending Section 624.51055, F.S.

Beginning July 1, 2010, taxpayers were allowed to apply for a credit allocation for contributions to a nonprofit scholarship funding organization for a tax credit against excise taxes on liquor, wine, and malt beverages administered by the Division of Alcoholic Beverages and

Tobacco of the Florida Department of Business and Professional Regulation. Beginning January 1, 2011, certain taxpayers are allowed to apply for a credit allocation to be taken as a tax credit against sales and use tax, and taxpayers who pay the tax on oil and gas production in Florida are allowed to apply for a credit allocation to be taken as a tax credit.

This rule chapter is necessary to establish rules for administering the tax credits for contributions made to nonprofit scholarship funding organizations under Section 1002.395, F.S., Florida Tax Credit Scholarship Program, including the procedures and applications governing the approval of tax credit allocations and rescindments, the procedures to be followed by taxpayers when claiming tax credits on tax returns, and the procedures to obtain approval to carry forward tax credits to a subsequent tax year.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 11, 2010

The proposed creation of Rule Chapter 12-29, F.A.C. (Multitax Credits), was noticed for rule development workshop in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, pp. 4558-4559). A rule development workshop was held on October 11, 2010, in Building 2, Room 1220, 2450 Shumard Oak Boulevard, Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed new rule chapter.

PARTIES ATTENDING

For the Department
of Revenue

SARAH WACHMAN, Senior Management Analyst II,
Workshop Moderator
JANET L. YOUNG, Tax Law Specialist, Technical
Assistance and Dispute Resolution

For the Public

GEORGIANN BLAZE, American Traffic Solutions
SARRAH CARROLL, Florida Association of Counties
CYNTHIA HENDERSON, American Traffic Solutions
TREVOR MASK, Colodny Fass Talenfeld Karlinksy
Abate
TRAVIS MILLER, Radey Thomas Yon Clark, Attorneys
& Counselors at Law
WILLIAM STANDER, Property Casualty Insurers
Association of America

For the Public
Via Telephone

TOM CLAYTON

No comments were received at the rule development workshop. In response to oral comments received by telephone, changes were made to provide that beginning January 3, 2011 (the first business day of calendar year 2011), taxpayers may apply for a credit allocation of the annual tax credit amount for the 2011-2012 state fiscal year (July 1, 2011 – June 30, 2012) to be taken as a tax credit against any of the following taxes:

- Corporate income tax
- Insurance premium tax
- Use tax paid by taxpayers who hold a Sales and Use Tax Direct Pay Permit
- Tax on oil production or gas production
- Excise tax on liquor beverages
- Excise tax on wine beverages
- Excise tax on malt beverages

SUMMARY OF PUBLIC HEARING

HELD ON FEBRUARY 22, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on February 22, 2011, and approved the publication of the Notice of Proposed Rule for the creation of Rule Chapter 12-29, F.A.C. (Multitax Credits). A notice for the public hearing was published in the Florida Administrative Weekly on February 4, 2011 (Vol. 37, No. 5, pp. 319-320).

SUMMARY OF RULE HEARING

HELD ON APRIL 11, 2011

The proposed amendments to Rule Chapter 12-29, F.A.C. (Multitax Credits), were noticed for a rule hearing in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 670-675). A rule hearing was held on April 11, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one appeared to provide comments.

Comments were received from the Joint Administrative Procedures Committee, dated April 6, 2011, regarding proposed Form DR-116000, Application for Tax Credit Allocation for Contributions to Nonprofit Scholarship Funding Organizations (SFOs). This form provides that a nonprofit scholarship funding organization will issue a certificate of contribution “when requested.” A Notice of Change to remove “when requested” from page 3, the first paragraph of Form DR-116000 has been filed for publication in the April 22, 2011, issue of the Florida Administrative Weekly. A technical change has been made to correct the statute reference to section 1002.395(2), F.S., in paragraphs (1)(a) and (e) of Rule 12-29.002, F.A.C.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-29, FLORIDA ADMINISTRATIVE CODE
MULTITAX CREDITS
CREATING RULES 12-29.001 THROUGH 12-29.003

12-29.001 Scope. This rule chapter sets forth the rules to be used in the administration of tax credits for contributions made to nonprofit scholarship funding organizations under Section 1002.395, F.S., Florida Tax Credit Scholarship Program. That program allows taxpayers to receive a credit allocation for contributions made to nonprofit scholarship funding organizations. This rule chapter establishes procedures governing the approval of tax credit allocations and rescindments, the approval for carryforward tax credits to a subsequent tax year, and the procedures to be followed by taxpayers when claiming tax credits on tax returns. Rulemaking Authority 1002.395(13) F.S. Law Implemented 211.0251, 212.1831, 220.1875, 561.1211, 624.51055, 1002.395(1)-(3), (13) FS. History-New _____.

12-29.002 Florida Tax Credit Scholarship Program; Participation; Allocation; Carryforward; Rescindment.

(1) Definitions. For purpose of this rule, the following terms mean:

(a) “Contribution” means an eligible contribution, as defined in Section 1002.395(2), F.S., made to an eligible nonprofit scholarship funding organization.

(b) “Credit allocation” means an allocation to a taxpayer of an annual tax credit cap authorized under the Florida Tax Credit Scholarship Program.

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

(d) “Division” means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(e) “Eligible nonprofit scholarship funding organization” means a charitable organization as defined in Section 1002.395(2), F.S. A list of eligible nonprofit scholarship funding organizations established by the Department of Education is available at www.floridaschoolchoice.org/.

(f) “State fiscal year” means the annual period beginning July 1 through June 30 of the following year.

(g) “Tax credit cap” means the maximum annual tax credit amount that the Department is authorized in Section 1002.395(5), F.S., to allocate. The Department will issue a Tax Information Publication to announce increases in the maximum annual tax credit amount.

(2) TAXPAYERS ELIGIBLE TO PARTICIPATE IN THE PROGRAM. Taxpayers who pay any of the following taxes may apply to the Department for a credit allocation as follows:

(a) For the taxes administered by the Department:

1. Florida corporate income tax imposed under Chapter 220, F.S.

2. Florida insurance premium tax imposed under Section 624.509, F.S.

3. Taxpayers who hold a valid Sales and Use Tax Direct Pay Permit, issued by the Department, as provided in Section 212.183, F.S., and Rule 12A-1.0911, F.A.C.

4. Taxpayers who pay tax on oil production in Florida imposed under Section 211.02, F.S., or who pay tax on gas production in Florida imposed under Section 211.025, F.S.

5. Taxpayers who were eligible for tax credits authorized by Sections 220.187 and 624.51055, F.S., prior to July 1, 2010, remain eligible for the tax credit now authorized by

Section 1002.395, F.S.

(b) For excise taxes administered by the Division:

1. Excise tax on liquor beverages imposed under Section 565.12, F.S.;

2. Excise tax on wine beverages imposed under Section 564.06, F.S., except excise taxes imposed on wine produced by manufacturers in Florida from products grown in Florida; or,

3. Excise tax on malt beverages imposed under Section 563.05, F.S.

(3) APPLICATIONS FOR CREDIT ALLOCATIONS.

(a) To receive a credit allocation, taxpayers must apply on-line using the Department's website at www.myflorida.com/dor/taxes/tax_incentives.html or submit an Application for Tax Credit for Contributions to Nonprofit Scholarship Funding Organizations (Form DR-116000, incorporated by reference in Rule 12-29.003, F.A.C.) to the Department.

1. 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 application is completed and submitted online, a confirmation number will be provided to confirm receipt of the application.

2. The fastest and easiest way to apply for the credit is to use the online application. Taxpayers who do not meet these requirements are encouraged to apply online. However, such taxpayers may apply for a credit allocation by filing a paper application with the Department.

(b) A separate application to receive a credit allocation is required for:

1. Each eligible nonprofit scholarship funding organization the taxpayer intends to support; and

2. Each beverage license issued by the Division for which a separate return to report and pay the excise taxes on liquor, wine, and malt beverages is filed with the Division.

(c) Taxpayers are eligible to apply during the following periods to receive a credit allocation from each annual tax credit cap for the following taxes as follows:

1. Corporate Income Tax - A taxpayer may make an application for a credit allocation on the first business day of January of each calendar year for its tax year that begins during that calendar year. The application must be made on or before the last day of the taxpayer's corporate income tax year.

a. Example: A calendar year taxpayer may apply for a credit allocation for the 2011-2012 state fiscal year credit beginning on January 3, 2011. The application must be made on or before December 31, 2011.

b. Example: A taxpayer with a tax year beginning December 1, 2011, and ending November 30, 2012, may apply for a credit allocation for the 2011-2012 state fiscal year beginning on January 3, 2011. The application must be made on or before November 30, 2012.

2. Insurance Premium Tax - An application for a credit allocation may be made beginning on the first business day of January of each calendar year and may not be made after December 31 of that calendar year. Example: For the 2011-2012 state fiscal year tax credit cap, a taxpayer may submit an application for a credit allocation beginning on January 3, 2011. The application must be made on or before December 31, 2011.

3. Sales and Use Tax - Tax on Oil and Gas Production - Excise Taxes on Liquor, Wine, and Malt Beverages - A taxpayer may make an application for a credit allocation on the first business day of January of the calendar year preceding the state fiscal year beginning on July 1 of the calendar year. The application must be made by June 30 of the state fiscal year for which the taxpayer is applying. For example, for a credit allocation for the 2011-2012 state fiscal year, taxpayers may apply for a credit allocation beginning on January 3, 2011. The application must

be made on or before June 30, 2012.

(d) The Department will accept applications until the tax credit cap is reached, until the end of the state fiscal year, or until the end of the tax year for corporate income tax and insurance premium tax, whichever occurs first.

(4) NOTIFICATION.

(a) The Department will approve credit allocations on a first-come, first-served basis. Within ten days of receipt of an application, the Department will send written correspondence regarding the amount of the credit allocation for each tax applied for, or the reason the credit allocation could not be approved. For excise tax on liquor, wine, and malt beverages, the Division must approve the credit allocation before the Department will issue such correspondence.

(b) When approved, the Department's approval letter will specify the period in which the contribution to the designated nonprofit scholarship funding organization must be made. Contributions must be made during the year specified in the approval letter. The organization receiving a contribution will issue the taxpayer a certificate of contribution signed by an officer or authorized representative of the organization containing:

1. Contributor's name;
2. Contributor's federal identification number;
3. Contributor's license number issued by the Division, if applicable;
4. Amount of contribution;
5. Date of contribution; and
6. Name of eligible nonprofit scholarship funding organization.

(c) The amount of tax credit claimed on a tax return is limited to the amount of

contribution contained in the certificate of contribution issued by an eligible nonprofit scholarship funding organization. The taxpayer must make the contribution before the credit is claimed on a tax return.

(d) No tax credit will be allowed when a taxpayer:

1. Fails to make the designated contribution;
2. Fails to make a contribution before claiming the tax credit on a tax return;
3. Claims the credit against tax due prior to the date the contribution is made;
4. Makes a contribution to an ineligible organization; or,
5. Makes the contribution outside the period specified in the Department's approval letter.

(e) When an eligible nonprofit scholarship funding organization is unable to accept the taxpayer's contribution, or a part of the contribution, because of its obligations under Section 1002.395, F.S., the taxpayer may make a contribution or partial contribution to another eligible nonprofit scholarship funding organization. The organization unable to accept the taxpayer's contribution must provide a written statement to the taxpayer declining the contribution. The taxpayer is required to keep the written statement with its books and records.

(5) TAX CREDITS.

(a)1. Corporate Income Tax - A tax credit of 100 percent of the contribution against any corporate income tax due for the tax year is allowed. The amount of the tax credit for a tax year:

a. Is limited to 75 percent of the corporate income tax due after application of any other allowable credits taken by the taxpayer for that tax year;

b. Must be reduced by the difference in federal corporate income tax due computed with the credit and without the credit; and

c. Must be added back to taxable income in determining Florida corporate income tax

due.

2. Taxpayers must attach a copy of the certificate of contribution from each eligible nonprofit scholarship funding organization to the tax return on which the credit allocation, or a portion of the credit allocation, is taken as a tax credit.

(b)1. Insurance Premium Tax - A tax credit of 100 percent of the contribution against any insurance premium tax due under Section 624.509(1), F.S., for the tax year is allowed. The amount of the tax credit for a tax year is limited to 75 percent of the tax due after deducting:

a. Assessments made pursuant to Section 440.51, F.S. (workers compensation administrative assessments);

b. Credits for taxes paid under Sections 175.101 and 185.08, F.S. (firefighters' and police officers' pension trust funds); and,

c. Credits for income taxes and emergency excise taxes paid under Chapters 220 and 221, F.S., and the salary credit allowed under Section 624.509(5), F.S., as these are limited by Section 624.509(6), F.S. (the 65 percent limitation).

2. Taxpayers must attach a copy of the certificate of contribution from each eligible nonprofit scholarship funding organization to the tax return on which the credit allocation, or a portion of the credit allocation, is taken as a tax credit.

(c)1. Sales and Use Tax - Beginning January 1, 2011, a tax credit of 100 percent of the contribution is allowed against any sales and use tax due imposed under Chapter 212, F.S., to any taxpayer who holds a valid Sales and Use Tax Direct Pay Permit issued by the Department.

2.a. Taxpayers must submit a copy of the certificate of contribution from each eligible nonprofit scholarship funding organization to:

Florida Department of Revenue

Revenue Accounting

P. O. Box 6609

Tallahassee, FL 32314-6609

b. Within ten days of receipt of the copy of the certificate, the Department will send written instructions on how to claim the credit allocation as a tax credit on a sales and use tax return remitted to the Department by electronic means.

(d)1. Tax on Oil and Gas Production - A tax credit of 100 percent of the contribution is allowed against any tax due on oil or gas production in Florida imposed under Sections 211.02 and 211.025, F.S. The tax credit may not exceed 50 percent of the tax due on the return on which the tax credit is taken.

2. Taxpayers must attach a copy of the certificate of contribution from each eligible nonprofit scholarship funding organization to the tax return on which the credit allocation, or a portion of the credit allocation, is taken as a tax credit.

(e)1. Excise Tax on Liquor, Wine, and Malt Beverages - A tax credit of 100 percent of the contribution is allowed against the following taxes administered by the Division.

a. Excise tax on liquor beverages imposed under Section 565.12, F.S.:

b. Excise tax on wine beverages imposed under Section 564.06, F.S., except excise taxes imposed on wine produce by manufacturers in Florida from products grown in Florida; or,

c. Excise tax on malt beverages imposed under Section 563.05, F.S.

2. The tax credit taken on a return filed with the Division is limited to 90 percent of the tax due on the return. Taxpayers must attach a copy of the certificate of contribution from each eligible nonprofit scholarship funding organization to the tax return on which the credit

allocation, or a portion of the credit allocation, is taken as a tax credit.

(f) Contributions to an eligible nonprofit scholarship funding organization are not payments of estimated tax or installment payments of tax.

(6) CARRYFORWARD OF UNUSED CREDITS.

(a) When a taxpayer is unable to use a tax credit during the period specified by the Department in the approval letter, because the taxpayer's liability is insufficient, the taxpayer may apply to carry forward the unused tax credit amount for a period not to exceed three years. Taxpayers must apply on-line using the Department's website at www.myflorida.com/dor/taxes/tax_incentives.html or submit an Application for Tax Credit for Contributions to Nonprofit Scholarship Funding Organizations (Form DR-116000, incorporated by reference in Rule 12-29.003, F.A.C.) requesting approval to carry forward the unused portion of the tax credit during the year in which the taxpayer wants to carry forward the unused tax credit. Applications to carry forward amounts beyond the three-year period will not be accepted by the Department. See paragraph (3)(a) for submitting the application to the Department.

(b) A separate application to carry forward an unused tax credit is required for each beverage license issued by the Division for which a separate return to report and pay the excise taxes on liquor, wine, and malt beverages is filed with the Division.

(c) Within ten days of receipt of the application, the Department will send written correspondence regarding the amount of the credit carryforward, or the reason the carryforward request could not be approved. For excise tax on liquor, wine, and malt beverages, the Division must approve the carryforward before the Department will issue such correspondence. No request will be approved when the application for a credit allocation carryforward is submitted for a period beyond three years from the year in which the credit allocation was approved.

(d) Examples.

1. Corporate Income Tax Example - A calendar year taxpayer applied for and was approved for a credit allocation against corporate income tax for the year ending December 31, 2011. To carry forward the unused portion of the credit allocation from its tax year ending December 31, 2011, to its tax year ending December 31, 2012, the taxpayer must apply to the Department, specifying the carryforward amount, on or after January 3, 2012. The application must be filed on or before December 31, 2012. If any unused portion of the credit allocation remains, the taxpayer must apply for a carryforward of the unused portion. Any unused carryforward from its tax year ending December 31, 2011, expires on December 31, 2014.

2. Insurance Premium Tax Example - A taxpayer applied for and was approved for a credit allocation against insurance premium tax due for calendar year 2010. To carry forward the unused portion of the credit allocation that was not taken on the 2010 insurance premium tax return (due March 1, 2011) to the 2011 insurance premium tax return, the taxpayer must apply to the Department, specifying the carryforward amount, on or after January 3, 2011. The application must be filed and approved on or before December 31, 2011. If any unused portion of the credit allocation remains, the taxpayer must apply for a carryforward of the unused portion. Any unused carryforward from its tax year ending December 31, 2010, expires on December 31, 2013.

3. Sales and Use Tax Example - A taxpayer who holds a Sales Tax Direct Pay Permit applied for and was approved for a credit allocation against sales and use tax due to the Department for the state fiscal year 2011-2012. The taxpayer paid the contribution to an eligible nonprofit scholarship funding organization on July 15, 2011, and submitted a copy of the certificate of contribution received from the organization to the Department. The taxpayer's

liability was insufficient to use the entire credit allocation on sales and use tax returns filed with the Department on or before June 30, 2012. To carry forward the unused portion of the tax credit to the 2012-2013 state fiscal year, the taxpayer must apply to the Department, specifying the carryforward amount during the 2012-2013 state fiscal year. The application must be filed and approved, and any approved carryforward must be taken on a sales and use tax return filed on or before June 30, 2013. If any unused portion of the credit allocation remains, the taxpayer must apply for a carryforward of the unused portion to be used during the following state fiscal year. Any unused carryforward from the 2011-2012 state fiscal year expires June 30, 2015.

4. Tax on Oil and Gas Production - The same application periods and credit carryforward periods that apply to a sales and use tax credit allocation apply to a credit allocation against the tax on oil and gas production.

5. Excise Taxes on Liquor, Wine, and Malt Beverages Example - A taxpayer who holds a liquor license issued by the Division applied for and was approved for a credit allocation against the liquor excise tax for returns due during the state fiscal year 2011-2012. The taxpayer's liability was insufficient to use the entire credit allocation during that state fiscal year. To carry forward the unused portion of the tax credit to the 2012-2013 state fiscal year, the taxpayer must apply to the Department, specifying the carryforward amount during the 2012-2013 state fiscal year. The application must be filed and approved, and any approved carryforward must be taken on a return filed with the Division, on or before June 30, 2013. If any unused portion of the credit allocation remains, the taxpayer must apply for a carry forward of the unused portion to be used during the following state fiscal year. Any unused carryforward from the 2011-2012 state fiscal year expires June 30, 2015.

(e) A taxpayer may not convey, assign, or transfer a credit allocation to another entity

unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction.

(7) RESCINDMENT OF UNUSED TAX CREDITS.

(a) The rescindment provision allows credit allocations that will not be used by the taxpayer to be reallocated to other taxpayers who may use the credit allocation. Taxpayers must apply on-line using the Department's website at www.myflorida.com/dor/taxes/tax_incentives.html or submit an Application for Rescindment of Tax Credit Allocation for Contributions to Nonprofit Scholarship Funding Organizations (Form DR-116100, incorporated by reference in Rule 12-29.003, F.A.C.) to the Department to rescind all or a portion of an unused credit allocation. See paragraph (3)(a) for submitting the application to the Department.

(b) An application for rescindment of the unused credit allocation by the Department will not be approved when:

1. The amount of credit allocation requested to be rescinded has been claimed as a credit on a previously filed return;

2. The taxpayer has had more than one approved rescindment of credit within the last three tax years; or,

3. The allocation year is closed for all taxpayers. The allocation period for a calendar year is closed for all taxes and all taxpayers on November 30 of the subsequent calendar year.

(c) Within ten days of receipt of an application, the Department will send written correspondence regarding the amount of the rescindment, or the reason rescindment could not be approved. For excise tax on liquor, wine, and malt beverages, the Division must approve the rescindment before the Department will issue such correspondence.

(d) When the approval of a rescindment allows the tax credit cap for a state fiscal year to be reopened and available for allocation, the Department will notify each nonprofit scholarship funding organization that the tax credit cap is available for allocation.

Rulemaking Authority 1002.395(13) F.S. Law Implemented 92.525(1)(b), 211.0251, 212.1831, 213.37, 220.1875, 561.1211, 624.51055, 1002.395(1)-(3), (13) FS. History-New _____.

12-29.003 Florida Tax Credit Scholarship Program; Applications.

(1)(a) The following application forms and instructions are used by the Department in its administration of the Florida Tax Credit Scholarship Program. These forms are hereby incorporated by reference in this rule.

(b) Copies of the application forms and instructions are available, without cost, by one or more of the following methods: 1) downloading the application from the Department's Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8 a.m. to 7 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center or, 4) writing the Florida Department of Revenue, 5050 West Tennessee Street, Tallahassee, Florida 32399-0100. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

<u>Form Number</u>	<u>Title</u>	<u>Effective Date</u>
<u>(2)(a) DR-116000</u>	<u>Application for Tax Credit Allocation for Contributions to Nonprofit Scholarship Funding Organizations (SFOs) (R. 04/11)</u>	<u>_____</u>
<u>(b) DR-116100</u>	<u>Application for Rescindment of Tax Credit Allocation for Contributions to Nonprofit</u>	

Scholarship Funding Organizations (SFOs)

(R. 01/11)

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Rulemaking Authority 213.06(1), 1002.395(13) F.S. Law Implemented 92.525(1)(b), 211.0251, 212.1831, 213.37, 220.1875, 561.1211, 624.51055, 1002.395(1)-(3), (13) FS. History-New

_____.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-8, FLORIDA ADMINISTRATIVE CODE
INSURANCE PREMIUM TAXES, FEES AND SURCHARGES
AMENDING RULE 12B-8.001

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12B-8.001, F.A.C. (Premium Tax; Rate and Computation), remove provisions and provide a reference to the rule chapter containing provisions for tax credits for contributions made to eligible nonprofit scholarship funding organizations.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The Florida Tax Credit Scholarship Program, as amended by Chapter 2010-24, L.O.F., allows taxpayers to receive a credit allocation for contributions made to nonprofit scholarship funding organizations. This law expands the tax credits against corporate income tax and insurance premium tax, transferring Section 220.187, F.S., to new Section 1002.395, F.S., and amending Section 624.51055, F.S. Taxpayers continue to be allowed to apply for a credit allocation to be taken as a tax credit against insurance premium tax, as provided in Section 624.51055, F.S., as amended by Section 11, Chapter 2010-24, L.O.F. When in effect, proposed Rule Chapter 12-29, F.A.C., Multitax Credits, will establish the procedures governing the approval of tax credit allocations and rescindments, the approval for carryforward tax credits to a subsequent tax year, and the procedures to be followed by taxpayers when claiming tax credits

on tax returns.

The proposed changes to Rule 12B-8.001, F.A.C. (Premium Tax; Rate and Computation), are necessary to remove provisions regarding the credit against insurance premium tax for contributions made to eligible nonprofit scholarship funding organizations that will be provided in Rule Chapter 12-29, F.A.C., when effective.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 11, 2010

The proposed amendments to Rule 12B-8.001, F.A.C. (Premium Tax; Rate and Computation), were noticed for a rule development workshop in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, p. 4561). A rule development workshop was held on October 11, 2010, in Building 2, Room 1220, 2450 Shumard Oak Boulevard, Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed rule amendments.

PARTIES ATTENDING

For the Department
of Revenue

SARAH WACHMAN, Senior Management Analyst II,
Workshop Moderator
JANET L. YOUNG, Tax Law Specialist, Technical
Assistance and Dispute Resolution

For the Public

GEORGIANN BLAZE, American Traffic Solutions
SARRAH CARROLL, Florida Association of Counties

CYNTHIA HENDERSON, American Traffic Solutions
TREVOR MASK, Colodny Fass Talenfeld Karlinksy
Abate
TRAVIS MILLER, Radey Thomas Yon Clark, Attorneys
& Counselors at Law
WILLIAM STANDER, Property Casualty Insurers
Association of America

For the Public
Via Telephone

TOM CLAYTON

No comments were received at the rule development workshop.

SUMMARY OF PUBLIC HEARING

HELD ON FEBRUARY 22, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on February 22, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule 12B-8.001, F.A.C. (Premium Tax; Rate and Computation). A notice for the public hearing was published in the Florida Administrative Weekly on February 4, 2011 (Vol. 37, No. 5, pp. 319-320).

SUMMARY OF RULE HEARING

HELD ON APRIL 11, 2011

The proposed amendments to Rule 12B-8.001, F.A.C. (Premium Tax; Rate and Computation), were noticed for a rule hearing in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 677-678). A rule hearing was held on April 11, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one appeared to provide comments. No comments were received.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-8, FLORIDA ADMINISTRATIVE CODE
INSURANCE PREMIUM TAXES, FEES AND SURCHARGES
AMENDING RULE 12B-8.001

12B-8.001 Premium Tax; Rate and Computation.

(1) through (2) No change.

(3) Credits Against the Tax.

(a) through (e) No change.

(f) Credit for Contributions to Nonprofit Scholarship Funding Organizations. See Rule Chapter 12-29, F.A.C., for provisions on credits against the tax for contributions made to eligible nonprofit scholarship funding organizations.

~~1. Section 624.51055, F.S., provides a credit of 100 percent of an eligible contribution made to an eligible nonprofit scholarship funding organization, as provided in Section 220.187, F.S., against any net tax due for a taxable year under Section 624.509(1), F.S. However, the credit may not exceed 75 percent of the tax due under Section 624.509(1), F.S., after deducting from such tax:~~

~~a. Deductions for assessments made pursuant to Section 440.51, F.S. (workers compensation administrative assessments);~~

~~b. Credits for taxes paid under Sections 175.101 and 185.08, F.S. (firefighter's and police officers' pension trust funds); and,~~

~~c. Credits for income taxes and emergency excise taxes paid under Chapters 220 and 221,~~

~~F.S., and the salary credit allowed under Section 624.509(5), F.S., as these are limited by Section 624.509(6), F.S. (the 65 percent limitation).~~

~~2. Contributions to a nonprofit scholarship funding organization are not payments of estimated tax or installment payments.~~

~~3. The provisions of Section 220.187, F.S., regarding definitions, the credit application process, the rescindment provisions, the preservation of credit provisions, and the administrative provisions, including the three year credit carryover provision, and the provisions of Rule 12C-1.0187, F.A.C., apply to the credit against the insurance premium tax for contributions to nonprofit scholarship funding organizations.~~

~~4. Applicants subject to the insurance premium tax imposed under Section 624.509(1), F.S., may only claim credit for eligible contributions they made to a nonprofit scholarship funding organization against their insurance premium tax liability.~~

(4) through (9) No change.

Rulemaking Authority 213.06(1), 220.183(4)(d), 288.99(11), 624.5105(4)(b) 1002.395(13) FS. Law Implemented 175.101, 175.1015, 175.121, 175.141, 185.08(3), 185.085, 185.10, 185.12, 213.05, 213.235, 220.183(3), ~~220.187~~, 288.99(11), 624.4621, 624.46226, 624.4625, 624.475, 624.509, 624.5092, 624.50921, 624.510, 624.5105, 624.51055, 624.511, 624.518, 624.519, 624.520(2), 626.7451(11), 627.3512, 627.357(9), 628.6015, 629.5011, 634.131, 634.313(2), 634.415(2), 1002.395 FS. History-New 2-3-80, Formerly 12B-8.01, Amended 3-25-90, 4-10-91, 2-18-93, 6-16-94, 10-19-94, 1-2-96, 12-9-97, 6-2-98, 4-2-00, 10-15-01, 8-1-02, 6-20-06, 9-1-09, 4-26-10, _____.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
AMENDING RULES 12C-1.0186, AND 12C-1.051
REPEAL RULE 12C-1.0187

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12C-1.0186, F.A.C. (Credit for Florida Alternative Minimum Tax), update the reference to the credits for contributions to nonprofit scholarship funding organizations to Section 220.1875, F.S., as provided in Sections 10 and 11, Chapter 2010-24, L.O.F.

The proposed repeal of Rule 12C-1.0187, F.A.C. (Credits for Contributions to Nonprofit Scholarship Funding Organizations), removes provisions regarding the credit against corporate income tax for contributions made to eligible nonprofit scholarship funding organizations that will be provided in Rule Chapter 12-29, F.A.C., when effective.

The proposed amendments to Rule 12C-1.051, F.A.C. (Forms), remove the obsolete application to obtain an allocation of the tax credit for contributions made to eligible nonprofit scholarship funding organizations and the obsolete application to rescind a credit allocation. Applications used to administer the Florida Tax Credit Scholarship Program will be provided in Rule Chapter 12-29, F.A.C. (Multitax Credits), when effective

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The Florida Tax Credit Scholarship Program, as amended by Chapter 2010-24, L.O.F., allows taxpayers to receive a credit allocation for contributions made to nonprofit scholarship funding organizations. This law expands the tax credits against corporate income tax and insurance premium tax, transferring Section 220.187, F.S., to new Section 1002.395, F.S., and creating Section 220.1875, F.S., to provide for the tax credit against corporate income tax. The proposed changes to Rule Chapter 12C-1, F.A.C., are necessary to update reference to the new law for purposes of the credit for the Florida alternative minimum tax and to remove rule provisions and forms relating to tax credits for contributions to nonprofit scholarship funding organizations prior to July 1, 2010. When in effect, proposed Rule Chapter 12-29, F.A.C. (Multitax Credits), will establish the procedures governing the approval of tax credit allocations and rescindments, the approval for carryforward tax credits to a subsequent tax year, and the procedures to be followed by taxpayers when claiming tax credits on tax returns.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 11, 2010

The proposed amendments to Rule Chapter 12C-1, F.A.C. (Corporate Income Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, pp. 4561-4562). A rule development workshop was held on October 11,

2010, in Building 2, Room 1220, 2450 Shumard Oak Boulevard, Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed rule amendments.

PARTIES ATTENDING

For the Department
of Revenue

SARAH WACHMAN, Senior Management Analyst II,
Workshop Moderator
JANET L. YOUNG, Tax Law Specialist, Technical
Assistance and Dispute Resolution

For the Public

GEORGIANN BLAZE, American Traffic Solutions
SARRAH CARROLL, Florida Association of Counties
CYNTHIA HENDERSON, American Traffic Solutions
TREVOR MASK, Colodny Fass Talenfeld Karlinksy
Abate
TRAVIS MILLER, Radey Thomas Yon Clark, Attorneys
& Counselors at Law
WILLIAM STANDER, Property Casualty Insurers
Association of America

For the Public
Via Telephone

TOM CLAYTON

No comments were received at the rule development workshop.

SUMMARY OF PUBLIC HEARING

HELD ON FEBRUARY 22, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on February 22, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule Chapter 12C-1, F.A.C. (Corporate Income Tax). A notice for the public hearing was published in the Florida Administrative Weekly on February 4, 2011 (Vol. 37, No. 5, pp. 319-320).

SUMMARY OF RULE HEARING

HELD ON APRIL 11, 2011

The proposed amendments to Rule Chapter 12C-1, F.A.C. (Corporate Income Tax), were noticed for a rule hearing in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 679-681). A rule hearing was held on April 11, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one appeared to provide comments. No comments were received.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
AMENDING RULES 12C-1.0186, AND 12C-1.051
REPEAL RULE 12C-1.0187

12C-1.0186 Credit for Florida Alternative Minimum Tax.

(1) If the Florida alternative minimum tax is paid pursuant to Section 220.11(3), F.S., or the Florida alternative minimum tax is offset by the credits provided in Section 220.1875 ~~220.187~~ or 220.193, F.S., an alternative minimum tax credit is allowed by Section 220.186, F.S., in subsequent years.

(2) The amount of the alternative minimum tax credit is equal to the excess of the alternative minimum tax paid over the amount of regular corporate income tax without application of the credits provided in Section 220.1875 ~~220.187~~ or 220.193, F.S., that would have otherwise been due. There is no limitation on the total dollar amount of the credit.

(3) through (4) No change.

Rulemaking Authority 213.06(1), ~~220.187(12)~~, 220.193(4), 220.51, 1002.395 FS. Law Implemented 220.186, 220.1875, ~~220.187~~ 220.193 FS. History—New 12-7-92, Amended 4-26-10, _____.

12C-1.0187 Credits for Contributions to Nonprofit Scholarship Funding Organizations.

~~(1) An Application for Corporate Income Tax and Insurance Premium Tax Credit for~~

~~Contributions to Nonprofit Scholarship Funding Organizations (Form F-1160, incorporated by reference in Rule 12C-1.051, F.A.C.) must be filed with the Department to receive such credit. Applicants subject to the insurance premium tax imposed under Section 624.509, F.S., may only claim credit for eligible contributions they made to a nonprofit scholarship funding organization against their insurance premium tax liability. All other taxpayers may only claim the credit for eligible contributions made to a nonprofit scholarship funding organization against their corporate income tax liability. Contributions to a nonprofit scholarship funding organization are not payments of estimated tax or installment payments.~~

~~(a) 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 via the Department's Internet site at www.myflorida.com/dor. When the application for credit has been completed and submitted electronically, a confirmation screen will provide a confirmation number and will confirm receipt of the electronic application for credit.~~

~~(b) Taxpayers who are not 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., are encouraged to apply online via the Department's Internet site at www.myflorida.com/dor. However, such taxpayers may apply for an allocation of credit by filing a paper version of Form F-1160 with the Department.~~

~~(c) The Department will send written correspondence to each applicant within ten working days of receipt of application (Form F-1160) regarding the amount of the tax credit approved or the reason the credit could not be approved.~~

~~(2) If the nonprofit scholarship funding organization named in the approval letter is unable to accept a contribution, in whole or in part, as a result of its obligations under Section~~

~~220.187, F.S., and it provides a written statement declining the contribution, the taxpayer may make the contribution, in whole or in part, to another eligible nonprofit scholarship funding organization. Contributions must be made during the tax year specified in the approval letter.~~

~~(3) If a taxpayer receives an approval letter from the Department of Revenue, but fails to make the contribution, no credit is allowed. If a taxpayer receives an approval letter from the Department of Revenue, but makes the contribution to an ineligible organization, or a nonprofit scholarship funding organization does not accept the contribution, no credit is allowed. If the contribution is made outside the tax year for which the credit was approved, no credit is allowed.~~

~~(4) A taxpayer is required to make a separate application for each nonprofit scholarship funding organization it intends to support or any carry forward credit it would like to use.~~

~~(5) If the credit granted pursuant to this section is not fully used in any one year, the unused amount may be carried forward for a period not to exceed three years. Any taxpayer that seeks to carry forward an unused amount of credit must submit Form F-1160 to the Department in the year that the taxpayer intends to use the carry forward amount. The Department will send written correspondence to the applicant within ten working days regarding the amount of carry forward credit that the taxpayer may use or the reason the Department could not approve the use of a carry forward credit.~~

~~(6) A taxpayer may not convey, assign, or transfer the credit authorized by this section to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction.~~

~~(7) A taxpayer may apply to the Department for rescindment of all or part of a previously approved credit allocation for a contribution to a nonprofit scholarship funding organization, or a credit carryforward. The rescindment will be approved unless: (1) the taxpayer has had more~~

~~than one approved rescindment of this credit within the last three (3) tax years; (2) the previously approved credit allocation amount to be rescinded has been claimed as a credit on a previously filed Florida corporate income tax or insurance premium tax return; or (3) the allocation year is closed for all taxpayers. The allocation for a particular year is closed for all taxpayers at the end of the subsequent calendar year. For example, the allocation year beginning January 1, 2009, closes for all taxpayers on December 31, 2010, regardless of whether the annual allotment has been reached, because there are no more tax years remaining open that began in calendar year 2009 as of December 31, 2010.~~

~~(a) An Application for Rescindment of Corporate Income Tax and Insurance Premium Tax Credit for Contributions to Nonprofit Scholarship Funding Organizations (Form F-1161, incorporated by reference in Rule 12C-1.051, F.A.C.) must be filed with the Department to rescind all or part of a previously approved credit allocation or credit carryforward allocation.~~

~~(b)1. 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 for rescindment of all or part of a previously approved credit allocation for a contribution to a nonprofit scholarship funding organization, or a credit carryforward, online via the Department's Internet site at www.myflorida.com/dor. When the application for rescindment has been completed and submitted electronically, a confirmation screen will provide a confirmation number and will confirm receipt of the electronic application for rescindment.~~

~~2. Taxpayers who are not 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., are encouraged to apply for the rescindment of a credit allocation for a contribution to a nonprofit scholarship funding organization by applying online via the Department's Internet site. However, such taxpayers may~~

~~apply for a rescindment by filing a paper version of Form F-1161 with the Department.~~

~~(c) The Department will send written correspondence to each rescindment applicant within ten working days of receipt of the application for rescindment regarding the amount of the rescindment or the reason the rescindment could not be approved.~~

~~(d) If the approval of a rescindment reopens the credit allocation for a year in which the annual allotment had previously been reached, the Department will notify each nonprofit scholarship funding organization that additional credit is available for allocation for that year.~~

Rulemaking Authority 213.06(1), 220.187, 220.51 FS. Law Implemented 213.05, 213.35, 213.755, 220.03(1), 220.131, 220.187, 220.44, 624.51055 FS. History-New 3-15-04, Amended 4-5-07, 4-26-10, Repealed.

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.

(12)(a) F-1160	Application for Corporate Income Tax and Insurance Premium Tax Credit for Contributions to Nonprofit Scholarship Funding Organizations	
	(R. 07/09)	04/10

(b) F-1161	Application for Rescindment of Corporate	
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~~Income Tax and Insurance Premium Tax~~

~~Credit for Contributions to Nonprofit~~

~~Scholarship Funding Organizations~~

~~(R. 07/09)~~

04/10

(13) through (15) Renumbered (12) through (14) No change.

Rulemaking Authority 213.06(1), ~~220.187~~, 220.192(7), 220.193(4), 220.51, 1002.395(13) FS.

Law Implemented 119.071(5), 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 ~~220.187~~, 220.1895, 220.19, 220.191, 220.192, 220.193, 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, 624.51055, 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, 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,_____.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
CREATING RULE 12A-1.0143

SUMMARY OF PROPOSED RULE

The proposed creation of Rule 12A-1.0143, F.A.C. (Manufacturing and Spaceport Investment Incentive Program Tax Refunds), provides procedures to be used in obtaining a refund of taxes paid on purchases of eligible equipment from the Department of Revenue pursuant to the Manufacturing and Spaceport Investment Incentive Program, administered by the Office of Tourism, Trade, and Economic Development.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed creation of Rule 12A-1.0143, F.A.C. (Manufacturing and Spaceport Investment Incentive Program Tax Refunds), is necessary to provide procedures to obtain a refund of taxes paid on purchases of eligible equipment authorized by the Manufacturing and Spaceport Investment Incentive Program administered by the Office of Tourism, Trade, and Economic Development. This rule will provide how to obtain a refund of taxes paid on purchases of eligible equipment authorized under the Program and the time frame for filing an application for refund with the Department of Revenue.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 11, 2010

The proposed creation of Rule 12A-1.0143, F.A.C. (Manufacturing and Spaceport Investment Incentive Program Tax Refunds), was noticed for a rule development workshop in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, p. 4559). A rule development workshop was held on October 11, 2010, in Building 2, Room 1220, 2450 Shumard Oak Boulevard, Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed rule amendments.

PARTIES ATTENDING

For the Department
of Revenue

SARAH WACHMAN, Senior Management Analyst II,
Workshop Moderator
JANET L. YOUNG, Tax Law Specialist, Technical
Assistance and Dispute Resolution

For the Public

GEORGIANN BLAZE, American Traffic Solutions
SARRAH CARROLL, Florida Association of Counties
CYNTHIA HENDERSON, American Traffic Solutions
TREVOR MASK, Colodny Fass Talenfeld Karlinksy
Abate
TRAVIS MILLER, Radey Thomas Yon Clark, Attorneys
& Counselors at Law
WILLIAM STANDER, Property Casualty Insurers
Association of America

For the Public
Via Telephone

TOM CLAYTON

No comments were received at the rule development workshop.

SUMMARY OF PUBLIC HEARING

HELD ON FEBRUARY 22, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on February 22, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule 12A-1.0143, F.A.C. (Manufacturing and Spaceport Investment Incentive Program Tax Refunds). A notice for the public hearing was published in the Florida Administrative Weekly on February 4, 2011 (Vol. 37, No. 5, pp. 319-320).

SUMMARY OF RULE HEARING

HELD ON APRIL 11, 2011

The proposed amendments to Rule 12A-1.0143, F.A.C. (Manufacturing and Spaceport Investment Incentive Program Tax Refunds), were noticed for a rule hearing in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 676-677). A rule hearing was held on April 11, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one appeared to provide comments. No comments were received.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
CREATING RULE 12A-1.0143

12A-1.0143 Manufacturing and Spaceport Investment Incentive Program Tax Refunds.

(1) Who May Claim the Refund? Any eligible entity that has received approval from the Office of Tourism, Trade, and Economic Development for the purchase of eligible equipment for use in the Manufacturing and Spaceport Investment Incentive Program may claim the refund. A refund will be allowed on state sales and use taxes previously paid, but not on any discretionary sales surtax paid. The refunds are limited to the time periods and amounts provided in subsection (2).

(2) Amount of the Refund. The refund amount is based on an eligible entity's purchases of eligible equipment placed in service in Florida during the state fiscal years 2010-2011 and 2011-2012 (July 1, 2010-June 30, 2011, and July 1, 2011-June 30, 2012) in excess of the entity's total cost of eligible equipment purchased and placed into service in Florida by the entity in its tax year that began in 2008. The total amount of refund available to an eligible entity is limited to the amount of previously paid state sales and use tax certified by the Office of Tourism, Trade, and Economic Development and will not exceed \$50,000 in each of the state fiscal years 2010-2011 and 2011-2012.

(3) Obtaining the Refund.

(a) Taxpayers must file an application with the Office of Tourism, Trade, and Economic

Development for eligibility for a tax refund under the Manufacturing and Spaceport Investment Incentives Program. Applications may be obtained at http://www.flgov.com/financial_incentives or by contacting the Office at (850) 487-2568.

(b) When the Office of Tourism, Trade, and Economic Development sends written certification to the applicant certifying the amount of Florida sales and use tax refund, the Office will send a copy of the written certification to the Department. To obtain a refund of Florida sales and use tax previously paid on purchases of eligible equipment under the Manufacturing and Spaceport Investment Incentive Program, a completed Application for Refund-Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), with a copy of the certification letter issued by the Office, must be filed with the Department. Form DR-26S must be filed within 30 days from the date of the written certification issued by the Office.

Applications for Refund-Sales and Use Tax are available on the Department's website at www.myflorida.com/dor/forms. Form DR-26S, with a copy of the certification letter, should be mailed to:

Florida Department of Revenue

Refund Subprocess

P.O. Box 6490

Tallahassee, Florida 32314-6490.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 213.255, 215.26,

288.1083 FS. History–New _____.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULE 12A-1.011

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12A-1.011, F.A.C. (Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice), provide that germicides used in the treatment of sewage are tax-exempt.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Prior to amendment effective July 12, 2010, Rule 12A-1.020, F.A.C., provided that germicides used in the treatment of drinking water and sewage are exempt from tax. Provisions regarding the treatment of germicides for treating drinking water were moved to Rule 12A-1.011, F.A.C., effective November 3, 2009; however, provisions regarding germicides used to treat sewage were omitted from the amendments to Rule 12A-1.011, F.A.C. The proposed amendments to Rule 12A-1.011, F.A.C. (Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice), are necessary to add that germicides used in the treatment of sewage are exempt from tax.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT

A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on December 23, 2010 (Vol. 36, No. 51, pp. 6069-6070), to advise the public of the development of changes to Rule 12A-1.011, F.A.C. (Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice), and to provide that, if requested in writing, a rule development workshop would be held on January 10, 2011. No request was received by the Department.

SUMMARY OF PUBLIC HEARING

HELD ON FEBRUARY 22, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on February 22, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule 12A-1.011, F.A.C. (Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice). A notice for the public hearing was published in the Florida Administrative Weekly on February 4, 2011 (Vol. 37, No. 5, pp. 319-320).

SUMMARY OF RULE HEARING

HELD ON APRIL 11, 2011

The proposed amendments to Rule 12A-1.011, F.A.C. (Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice), were noticed for a rule hearing in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 675-676). A rule hearing was held on April 11, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one appeared to provide comments. No comments were received.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULE 12A-1.011

12A-1.011 Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice.

(1) through (6) No change.

(7) WATER AND ICE.

(a) through (c) No change.

(d) Germicides (such as chlorine), sodium silicate, activated charcoal, and similar purification agents used in the treatment of drinking water or sewage are exempt.

(e) No change.

(8) through (9) No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14)(c), (20), 212.05(1)(a)1.a., 212.06(1)(a), 212.07(2), 212.08(1), (4)(a)1., (7)(oo), (pp) FS. History— Revised 10-7-68, 6-16-72, 9-28-78, 10-29-81, Formerly 12A-1.11, Amended 12-8-87, 1-2-89, 8-10-92, 6-19-01, 4-17-03, 11-3-09,_____.



Executive Director
Lisa Vickers

May 3, 2011

MEMORANDUM

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

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

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

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

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

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

- Red light camera penalties; electronic remittance requirements

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

The Department has reviewed these proposed rules for compliance with HB 1565. The proposed rules will not 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 Chapter 12-28, F.A.C. (*Remittance Requirements for Clerks of the Court, Municipalities, and Counties*), Rule 12-24.003, F.A.C. (*Requirements to File or to Pay Taxes by Electronic Means*), and Rule 12-24.011, F.A.C. (*Public Use Forms*) and approval to file and certify them with the Secretary of State under Chapter 120, Florida Statutes.

ATTACHMENT #4

Child Support Enforcement – Ann Coffin, Director • General Tax Administration – Jim Evers, Director
Property Tax Oversight – James McAdams, Director • Information Services – Tony Powell, Director

www.myflorida.com/dor
Tallahassee, Florida 32399-0100

Red light camera penalties; electronic remittance requirements

Why are these proposed rules necessary?: Amendments to the current rules are needed to add electronic remittance requirements for red light camera penalties to current rules; to include time requirements for electronic remittances by Clerks of the Court for specified fees and charges amended by statute. The proposed amendments result from legislation during the 2009 and 2010 sessions.

What do these proposed rules do?: The proposed amendments provide for electronic remittance of red light camera penalties; provide time requirements for electronic remittance of fees and charges; remove obsolete remittance provisions.

Were comments received from external parties?: A rule workshop was held on October 11, 2010. The Florida Association of Counties and representatives from businesses hired by local counties to install and maintain the red light cameras attended the rule development workshop for this rule. No written comments were provided; however, both groups have indicated that they are in favor of the proposed rule. On February 22, 2011, the Governor and Cabinet approved the Department's request to conduct a hearing on these proposed rule changes. A rule hearing was held on April 11, 2011. No comments were received from the public on these proposals.

Attached are copies of:

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

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12-28, FLORIDA ADMINISTRATIVE CODE

~~CLERKS OF THE COURT~~ REMITTANCE REQUIREMENTS FOR CLERKS OF THE
COURT, MUNICIPALITIES, AND COUNTIES

AMENDING RULES 12-28.001, 12-28.002, 12-28.003, 12-28.004,
12-28.008 AND 12-28.009

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12-28.001, F.A.C. (Scope), provide that provisions for the remittance of traffic infraction detector penalties collected by municipalities or counties to the Department for disbursement to designated state funds, as provided in Section 316.0083, F.S., created by Section 5, Chapter 2010-80, L.O.F., will be included in the rule chapter.

The proposed amendments to Rule 12-28.002, F.A.C. (Definitions), include remittances by local governments of the traffic infraction detector penalties imposed under Section 316.0083, F.S., created by Section 5, Chapter 2010-80, L.O.F., in the definitions of terms used in the rule chapter.

The proposed amendments to Rule 12-28.003, F.A.C. (Enrollment Procedures), expand the rule to provide how municipalities or counties are to enroll, or update their enrollment, with the Department's e-Services Program for the remittance of traffic infraction detector penalties to the Department for disbursement to designated state funds, as provided in Section 316.0083, F.S., created by Section 5, Chapter 2010-80, L.O.F.

The proposed amendments to Rule 12-28.004, F.A.C. (Transmitting Funds and

Return/Remittance Detail to the Department): (1) update information regarding the transmitting of funds and the remittance of detailed information for the Clerk of the Court Revenue Remittance System; and (2) include provisions for the Traffic Infraction Detector (Red Light Camera) Remittance System to be used by municipalities for remittance of such penalties to the Department for disbursement to designated state funds, as provided in Section 316.0083, F.S., created by Section 5, Chapter 2010-80, L.O.F.

The proposed amendments to Rule 12-28.008, F.A.C. (Due Date; General Provisions), update the rule to: (1) include provisions for the remittance of traffic infraction detector penalties by municipalities or counties to the Department for disbursement to designated state funds, as provided in Section 316.0083, F.S., created by Section 5, Chapter 2010-80, L.O.F.; and (2) reflect the following law changes regarding the remittance/reporting of court-related fees by Clerks of the Court to the Department for distribution to designated state funds:

- Section 12, Chapter 2010-162, L.O.F., amends Section 28.245, F.S., to require Clerks of the Court to remit court-related charges to the Department by the 10th day of the month following the month of collection;
- Section 5, Chapter 2010-163, L.O.F., amends Section 322.20(11)(a), F.S., to require that the fees collected by the Clerk of the Court for providing transcripts or other documents or for assisting in search for an individual's driver history record be remitted to the Department within five working days, unless a shorter time is required by law;
- Section 13, Chapter 2010-134, L.O.F., imposes an administrative fee for trustee deeds recorded, as provided in Sections 721.855 and 721.856, F.S., required to be collected by the Clerk of the Court and remitted to the Department weekly in the same manner as the documentary stamp tax collected by the Clerk of the Court; and

- Sections 4, 5, and 19, Chapter 2009-204, L.O.F., repealed Section 28.37(4), F.S., removing provisions for the remittance of the amount of funds in excess of the approved budget amount established in Section 28.36, F.S., to the Department, and transfer the Department of Revenue Clerk of Court Trust Fund to the Justice Administrative Commission.

Sections 4, 5, and 19, Chapter 2009-204, L.O.F., repealed Section 28.37(4), F.S., removing provisions for the remittance of the amount of funds in excess of the approved budget amount established in Section 28.36, F.S., to the Department, and transfer the Department of Revenue Clerk of Court Trust Fund to the Justice Administrative Commission. The proposed amendments to Rule 12-28.009, F.A.C. (Distribution of Funds Received by the Department), remove these obsolete provisions from the rule.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The proposed changes to Rule Chapter 12-28, F.A.C. (Remittance Requirements for Clerks of the Court, Municipalities, and Counties), are necessary to update provisions for the electronic remittance and reporting of funds from all court-related charges collected by Clerks of the Court and to include provisions for the remittance of traffic infraction detector penalties imposed and collected by municipalities and counties for distribution to designated state funds by the Department.

The proposed amendments are necessary to expand the rule chapter to include provisions for the remittance of traffic infraction detector penalties collected by municipalities or counties to the Department for disbursement to designated state funds, as provided in Section 316.0083, F.S., created by Section 5, Chapter 2010-80, L.O.F. In addition, the rule chapter is being updated to reflect the following law changes regarding the remittance/reporting of court-related fees by

Clerks of the Court to the Department for distribution to designated state funds:

- Section 12, Chapter 2010-162, L.O.F., amends Section 28.245, F.S., to require Clerks of the Court to remit court-related charges to the Department by the 10th day of the month following the month of collection;
- Section 5, Chapter 2010-163, L.O.F., amends Section 322.20(11)(a), F.S., to require that the fees collected by the Clerk of the Court for providing transcripts or other documents or for assisting in search for an individual's driver history record be remitted to the Department within five working days, unless a shorter time is required by law;
- Section 13, Chapter 2010-134, L.O.F., imposes an administrative fee for trustee deeds recorded, as provided in Sections 721.855 and 721.856, F.S., required to be collected by the Clerk of the Court and remitted to the Department weekly in the same manner as the documentary stamp tax collected by the Clerk of the Court; and
- Sections 4, 5, and 19, Chapter 2009-204, L.O.F., repealed Section 28.37(4), F.S., removing provisions for the remittance of the amount of funds in excess of the approved budget amount established in Section 28.36, F.S., to the Department, and transferring the Department of Revenue Clerk of Court Trust Fund to the Justice Administrative Commission.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 11, 2010

The proposed amendments to Rule Chapter 12-28, F.A.C. (Remittance Requirements for Clerks of the Court, Municipalities, and Counties), were noticed for a rule development workshop in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, pp. 4557-4558). A rule development workshop was held on October 11, 2010, in Building 2, Room 1220, 2450 Shumard Oak Boulevard, Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed changes.

PARTIES ATTENDING

For the Department
of Revenue

SARA WACHMAN, Senior Management Analyst II,
Workshop Moderator
JANET L. YOUNG, Tax Law Specialist, Technical
Assistance and Dispute Resolution

For the Public

GEORGIANN BLAZE, American Traffic Solutions
SARRAH CARROLL, Florida Association of Counties
CYNTHIA HENDERSON, American Traffic Solutions
TREVOR MASK, Colodny Fass Talenfeld Karlinksy
Abate
TRAVIS MILLER, Radey Thomas Yon Clark, Attorneys
& Counselors at Law
WILLIAM STANDER, Property Casualty Insurers
Association of America

For the Public
Via Telephone

TOM CLAYTON

In response to a telephone request made prior to the rule development workshop by Mr. Ron LaFace, Capital City Consulting, changes have been made to refer to the Department's system for receiving penalties imposed under Section 316.0083, F.S., as the Traffic Infraction Detector (Red Light Camera) Remittance System. No further comments were received at the rule

development workshop.

SUMMARY OF PUBLIC HEARING

HELD ON FEBRUARY 22, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on February 22, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule Chapter 12-28, F.A.C. (Remittance Requirements for Clerks of the Court, Municipalities, and Counties). A notice for the public hearing was published in the Florida Administrative Weekly on February 4, 2011 (Vol. 37, No. 5, pp. 319-320).

SUMMARY OF RULE HEARING

HELD ON APRIL 11, 2011

The proposed amendments to Rule Chapter 12-28, F.A.C. (Remittance Requirements for Clerks of the Court, Municipalities, and Counties), were noticed for a rule hearing in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 665-670). A rule hearing was held on April 11, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one appeared to provide comments. No comments were received.

The Joint Administrative Procedures Committee submitted questions, dated April 6, 2011, regarding the statutory authority for the proposed amendments to Rule Chapter 12-28, F.A.C. The Department responded to this inquiry, and no changes have been made to the proposed rule.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12-28, FLORIDA ADMINISTRATIVE CODE

CLERKS OF THE COURT REMITTANCE REQUIREMENTS FOR CLERKS OF THE
COURT, MUNICIPALITIES, AND COUNTIES

AMENDING RULES 12-28.001, 12-28.002, 12-28.003, 12-28.004,

12-28.008 AND 12-28.009

12-28.001 Scope.

(1) Remittances by Clerks of the Court. This rule chapter sets forth the rules to be used in the administration of Section 213.13, F.S., which provides for the electronic remittance of all funds collected by the Clerks of the Court (“Clerk”) on behalf of the state or on behalf of the Court for distribution to the state and the electronic transmission of return/remittance detail ~~for~~ ~~such remittance~~ to the Department of Revenue for further disbursement to the various trust funds and agencies as designated in the applicable statutes.

(2) Remittances by Municipalities and Counties. This rule chapter also sets forth the rules to be used in the administration of Section 316.0083, F.S., which provides for the electronic remittance of the traffic infraction detector penalties collected by municipalities or counties (“Local Government”) and the electronic transmission of return/remittance detail to the Department of Revenue for disbursement to the designated funds.

Rulemaking Authority 213.06(1), 213.13 FS. Law Implemented 28.245, 213.13, ~~213.131~~, 219.07, 316.0083, 322.20(11), 721.8561 FS. History-New 8-19-02, Amended 6-1-09, _____.

12-28.002 Definitions. For the purposes of this rule chapter, the following terms and phrases when used in this rule chapter shall have the meanings ascribed to them in this rule, except where the context clearly indicates a different meaning:

(1) “Automated Clearing House” means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions rather than the physical movement of paper items.

(2) “ACH debit” means the electronic transfer of funds ~~that from a Clerk’s account,~~ which is generated upon ~~the Clerk’s instruction~~ of the Clerk or Local Government and cleared through the Automated Clearing House for deposit to the State Treasury.

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

(4) “Electronic funds transfer” means an electronic transfer of funds.

(5) “Payment information” means the data that ~~a Clerk~~ must be submitted to the Department ~~submit~~ when making an electronic remittance ~~and that must be communicated to the Department.~~ Payment information includes the:

(a) Payor information, which consists of the:

1. Bank account number; and,
2. Financial routing and transit number as issued by the American Banking Association;

(b) Contact person information, which consists of:

1. Name;
2. Business telephone number and fax number; ~~and,~~
3. Business e-mail address; and
4. ~~3.~~ Business mailing address.

(c) Name of person authorized to sign the electronic remittance.

(6) “Return/remittance detail” means that information required by statute or rules adopted by agencies that administer the programs for which the funds are collected. This information must, at a minimum, contain detailed data regarding the specific taxes, fees, fines, penalties, reimbursements, court costs, and other court-related funds that constitute the funds being electronically remitted.

(7) “Session” means the period of time from the point the Clerk logs onto the ~~Internet~~ Clerk of Court Revenue Remittance System up to the point the Clerk exits the system, or the period of time from the point the Local Government logs onto the Traffic Infraction Detector (Red Light Camera) Remittance System up to the point the Local Government exits the system.

A session can be concluded by:

- (a) The ~~Clerk through~~ completion of an electronic remittance of funds and transmission of detail and receipt of a confirmation number, which is defined as a “transaction”; or,
- (b) The ~~Clerk through~~ a “save and exit” feature (to return later for completion); or,
- (c) The system because of inactivity or a connectivity failure.

(8) “Working day” means any calendar day other than a Saturday, Sunday, or federal or state legal holiday or legal holiday of the jurisdiction in which the Clerk’s or Local Government’s financial institution is located.

Rulemaking Authority 213.06(1), 213.13 FS. Law Implemented 28.245, ~~28.36, 28.37(4)~~, 213.13, ~~213.131~~, 219.07, 316.0083, 721.8561 FS. History-New 8-19-02, Amended 6-1-09,_____.

12-28.003 Enrollment Procedures.

(1)(a) Each Clerk and each Local Government ~~or authorized designee who is~~ required to electronically remit funds collected and to electronically transmit return/remittance detail and to

~~electronically submit payment information~~ for such funds as provided in detail pursuant to Section 213.13, F.S., or Section 316.0083, F.S., must enroll with the Department for e-Services by:

1. Accessing ~~accessing~~ and completing enrollment on the Department's website ~~Internet~~ site at myflorida.com/dor/eservices/enroll.html; or

2. If unable to enroll using the Department's website, completing an Enrollment and Authorization for e-Services Program (Form DR-600, incorporated by reference in Rule 12-24.011, F.A.C.).

(b) Information regarding enrollment with the Department for e-Services may be obtained at myflorida.com/dor/eservices/enroll.html or by calling the Department toll-free at (800) 352-3671. Persons with hearing or speech impairments may call the Department's TDD at (800) 367-8331 or (850) 922-1115.

(c)(b) Copies of ~~the form~~ Form DR-600 may be obtained, without cost, by one or more of the following methods: 1) downloading the form from the Department's website ~~Internet site~~ at myflorida.com/dor/forms; or, 2) calling the Department at (800) 352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center or, 4) writing the Florida Department of Revenue, Taxpayer Services, 5050 West Tennessee Street Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32399-0112 ~~32304~~. Persons with hearing or speech impairments may call the Department's TDD at (800) 367-8331 or (850) 922-1115.

(2) Upon receipt of enrollment information ~~Within 30 consecutive calendar days of receiving the completed enrollment,~~ the Department will assign confidential user information directly to the Clerk or Local Government enrolling and issue the Clerk an acknowledgement

letter that includes the confidential user information and instructions the following:

~~(a) The Clerk's business partner or user identification number.~~

~~(b) The Clerk's password.~~

~~(c) Instructions for signing onto the Department's Internet Clerk of Court Revenue Remittance System or onto the Department's Traffic Infraction Detector (Red Light Camera) Remittance System.~~

~~(d) The telephone number of the Department's e-Services Unit, which will assist the Clerks in complying with the requirements of this program and Section 213.13, F.S.~~

(3)(a) If for any reason a Clerk or his or her authorized designee is replaced or is unable to perform the activities required by Section 213.13, F.S., the successor must notify the Department within 30 consecutive calendar days of taking office or being hired ~~by accessing and completing a change request on the Department's Internet site, or completing and submitting a new Form DR-600.~~ If for any reason the contact person or person authorized to sign the electronic remittance designated by the Local Government is replaced, the Local Government must notify the Department within 30 consecutive calendar days.

(b) Clerks and Local Governments may notify the Department of updates to the e-Services profile by accessing and completing an update on the Department's website at myflorida.com/dor/e-services/enroll.html, or by completing a new Form DR-600 and submitting it to the Department.

~~(c)(b) All~~ However, all regularly-scheduled fund remittances must continue without interruption during any transition period.

Rulemaking Authority 213.06(1), 213.13 FS. Law Implemented 28.245, ~~28.36, 28.37(4)~~, 213.13, ~~213.131~~, 219.07, 316.0083, 721.8561 FS. History-New 8-19-02, Amended 6-1-09, _____.

12-28.004 Transmitting Funds and Return/Remittance Detail to the Department.

(1) Means of Funds and Detail Transmission - ~~A Clerk are required to use, as their means of funds and detail transmission,~~ a personal computer capable of accessing the Internet using a version of the Microsoft Internet Explorer browser that utilizes 128-bit secure socket layer (SSL) encryption is required. ~~Versions at or above 6.0 are strongly recommended.~~

(2) Procedures for Funds and Detail Transmission.

(a) After successful enrollment, the Clerk or his or her designee will access the ~~Internet Clerk of Court Revenue Remittance System,~~ or the Local Government will access the Traffic Infraction Detector (Red Light Camera) Remittance System, using the confidential user information provided by the Department ~~his or her Business Partner Number/User ID and Password~~. This action initiates a session, as defined in Rule 12-28.002, F.A.C.

(b) During the session, the ~~Clerk or his or her designee will be required to provide the~~ following information will be required:

1. Reporting period;
2. Return/remittance detail;
3. Payment information, as defined in Rule 12-28.002, F.A.C.

(c) The funds and detail transmission is not completed during any session until a confirmation number is issued. This number provides a means of verifying the transaction and serves as the ~~Clerk's~~ receipt.

(3) Method for Funds Remittance. The Department uses the ACH debit transfer ~~prescribed~~ method for funds remittance by ~~the Clerks~~ and by Local Governments to the Department ~~is the ACH-Debit method of electronic funds transfer~~. The Department will bear the costs of processing the funds remittance by the ACH debit transfer ~~ACH-Debit~~ method.

(4) Transmission Problems, Remittance Errors, and Failed Payments.

(a) Reporting Transmission Problems - ~~For Should the Clerk experience~~ problems ~~experienced with~~ transmitting the return/remittance detail, ~~the Clerk is required to~~ contact the Department's e-Services Unit as soon as possible:

1. By telephone at (850) 617-6623 ~~(850) 487-9713~~, or;
2. By fax at (850) 922-5088; or,
- ~~3.~~ By e-mail at cc-ehelp@dor.state.fl.us.

(b) Correcting Remittance Errors.

1. If, before 4:00 p.m., Eastern Time E.T., on the day of submission, ~~a Clerk discovers~~ that an error ~~has been made~~ in the return/remittance detail is discovered, ~~the Clerk must~~ contact the Department's e-Services Unit at (850) 617-6623 ~~(850) 487-9713~~ for assistance.

2. If, after 4:00 p.m., Eastern Time E.T., on the day of submission, or on any subsequent day thereafter, ~~a Clerk discovers~~ an error ~~has been made~~ in the return/remittance detail is discovered, ~~the Clerk must~~ contact the Department's Revenue Accounting by e-mail at REVENUEACCOUNTING@dor.state.fl.us or by telephone Refunds and Distribution Process at (850) 617-8586 ~~(850) 487-1150~~ to report the error.

(c) Replacing failed payments - ~~When If a Clerk discovers~~ that an electronic payment has failed or will be returned by the ~~his or her~~ financial institution, ~~the Clerk must immediately resubmit only the payment~~ must be resubmitted using the "Returned Item Repayment" option page of the remittance system ~~Internet Clerk of Court Revenue Remittance System~~. Additional ~~Should the Clerk require additional~~ assistance may be obtained by calling, ~~the Clerk may contact~~ the Department's Returned Items Unit at (850) 488-8663.

Rulemaking Authority 213.06(1), 213.13 FS. Law Implemented 28.245, ~~28.36~~, ~~28.37(4)~~, 213.13,

~~213.131~~, 219.07, 316.0083, 322.20(11), 721.8561 FS. History-New 8-19-02, Amended 6-1-09,_____.

12-28.008 Due Date; General Provisions.

(1) Transactions ~~The Clerks who are required~~ to remit funds electronically must be completed ~~complete the transaction~~ so that the amount due is deposited as collected funds to the State Treasurer's account on or before the remittance due date required by applicable statute or any agency rule.

(a) 5-Day Remittances. Fees imposed under Section 322.20(11)(a), F.S., for providing individual driver history transcripts or other documents, or for assisting in search for an individual's driver history record must be remitted no later than five working days after receipt of the fee, unless a shorter period is required by law. The Clerk must complete the transaction before 5:00 p.m., Eastern Time, on the fifth working day following the receipt of the fee.

(b)(a) Weekly Remittances. Documentary stamp tax, and nonrecurring intangible personal property tax, administrative fees for trustee deeds recorded as provided in Sections 721.855 and 721.856, F.S., collected by the Clerk, and traffic infraction detector penalties imposed under Section 316.0083, F.S., collected by the Local Government remittances must be remitted on a weekly basis. The Clerk must complete the transaction before 5:00 p.m., Eastern Time E.T., on the sixth working day following the close of the week in which the funds were received, as provided in Section 219.07, F.S.

(c)(b) Monthly Remittances. Court-related fees, services charges, court costs, and fines must be remitted on a monthly basis. The Clerk must complete the transaction before 5:00 p.m., Eastern Time, on the last working day before the 10th ~~20th~~ day of the month immediately

following the month in which the moneys were collected, as provided in Section 28.245, F.S. If the 10th day of the month falls on a Saturday, a Sunday, a legal holiday as defined in Section 683.01, F.S., or on a legal holiday of the jurisdiction in which the Clerk's financial institution is located, the transaction must be completed on or before 5:00 p.m., Eastern Time, on the preceding business day. ~~Failure to do so will constitute late payment.~~

~~(c) Annual Remittance. The cumulative excess of all fees, service charges, court costs, and fines retained by the Clerk over the amount needed to meet the approved budget amount established under Section 28.36, F.S., must be remitted on an annual basis. The Clerk must complete the transaction before 5:00 p.m., Eastern Time, on the last working day before December 31, each year, as provided in Section 28.37(4), F.S.~~

(d) Failure to remit the funds as provided in this subsection will constitute late payment. Late payments must be deposited on the next business day following the date that the transmission was completed.

(2) To assist ~~the Clerks~~ in complying with all statutory requirements for timely remittance of funds ~~due~~, the Department will annually develop a calendar of remittance dates for use by Clerks and Local Governments ~~by which the initiation of a transaction must be completed before 5:00 p.m., Eastern Time.~~ The annual calendar of remittance dates (~~Florida e-Services Program County Officers' Calendar of Remittance Dates, Form DR-659C~~) is posted on the Department's website at myflorida.com/dor/e-services and may also be obtained by calling the Department toll-free at (800) 352-3671 ~~or (850) 488-6800~~. Persons with hearing or speech impairments may call the Department's TDD at (800) 367-8331 or (850) 922-1115. Rulemaking Authority 213.06(1), 213.13 FS. Law Implemented 28.245, ~~28.36, 28.37(4)~~, 213.13, ~~213.131~~, 219.07, 316.0083, 322.20(11), 721.8561 FS. History-New 8-19-02, Amended 6-1-

09,_____.

12-28.009 Distribution of Funds Received by the Department.

(1) Upon receiving a Clerk's payment information and associated remittance information, the Department will verify that the funds for subsequent distribution reconcile with the associated remittance information submitted to the Department ~~provided by the Clerk~~.

(2) Within two working days of receiving an accurate payment ~~from the Clerk~~, the Department will make all required entries in the State accounting system. These entries will be based on the remittance detail for the appropriate trust fund or agency as designated in statute.

~~(3) If the Department determines, or is notified by a clerk's office or benefiting agency, that there has been an error made in the submission of the remittance amount, the payment information for such remittance, or the associated remittance information for those funds deposited in a departmental fund, the Department will hold the funds in the Department of Revenue Clerks of the Court Trust Fund until the Clerk has been contacted and the error has been corrected. In the case of errors in deposits to other agencies, the Department will assist the affected parties in correcting the error.~~

Rulemaking Authority 213.06(1), 213.13 FS. Law Implemented 28.245, 28.36, 28.37(4), 213.13, 213.131, 219.07, 316.0083, 322.20(11), 721.8561 FS. History-New 8-19-02, Amended 6-1-

09,_____.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12-24, FLORIDA ADMINISTRATIVE CODE

PAYMENT OF TAXES AND SUBMISSION OF RETURNS BY ELECTRONIC MEANS;

TAXPAYER RECORDKEEPING AND RETENTION REQUIREMENTS

PART I ELECTRONIC FUNDS TRANSFER AND RETURN SUBMISSION

AMENDING RULES 12-24.003 AND 12-24.011

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12-24.003, F.A.C. (Requirements to File or to Pay Taxes by Electronic Means): (1) clarify that mass transit system providers and local government users of diesel fuel who paid more than \$20,000 in the prior state fiscal year are required to file their fuel tax returns electronically; (2) provide that taxpayers who paid more than \$20,000 in pollutant taxes in the prior state fiscal year are required to file their pollutant tax returns electronically; and (3) include the statutory requirement that taxpayers who claim the entertainment industry tax credit authorized by Section 288.1254, F.S., must file their sales and use tax returns electronically.

The proposed amendments to Rule 12-24.011, F.A.C. (Public Use Forms), adopt, by reference, updates to Form DR-600, Enrollment and Authorization for e-Services Program.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The proposed amendments to Rule 12-24.003, F.A.C. (Requirements to File or to Pay Taxes by Electronic Means), are necessary to: (1) clarify that mass transit system providers and

local government users of diesel fuel are required to pay the fuel taxes electronically; (2) provide when returns to report pollutant taxes are required to be filed electronically; and (3) provide that pursuant to Section 212.08(5)(q), F.S., created by Section 9, Chapter 2010-147, L.O.F., taxpayers must file an electronic sales and use tax return to claim the entertainment industry tax credit authorized by Section 288.1254, F.S.

The proposed amendments to Rule 12-24.011, F.A.C. (Public Use Forms), are necessary to adopt, by reference, updates to forms used by the Department in its e-Services Program.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 11, 2010

The proposed amendments to Part I, Electronic Funds Transfer and Return Submission, Rule Chapter 12-24, F.A.C., were noticed for a rule development workshop in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, p. 4557). A rule development workshop was held on October 11, 2010, in Building 2, Room 1220, 2450 Shumard Oak Boulevard, Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed rule amendments.

PARTIES ATTENDING

For the Department
of Revenue

SARAH WACHMAN, Senior Management Analyst II,
Workshop Moderator

JANET L. YOUNG, Tax Law Specialist, Technical Assistance and Dispute Resolution

For the Public

GEORGIANN BLAZE, American Traffic Solutions
SARRAH CARROLL, Florida Association of Counties
CYNTHIA HENDERSON, American Traffic Solutions
TREVOR MASK, Colodny Fass Talenfeld Karlinksy
Abate
TRAVIS MILLER, Radey Thomas Yon Clark, Attorneys
& Counselors at Law
WILLIAM STANDER, Property Casualty Insurers
Association of America

For the Public
Via Telephone

TOM CLAYTON

WRITTEN COMMENTS

MICHAEL GIFFORD, Liberty Mutual Group
LISE HOLIDAY, Housing Authority Insurance Group
TRAVIS MILLER, Radey Thomas Yon Clark, Attorneys
& Counselors at Law
WILLIAM STANDER, Property Casualty Insurers
Association of America

NATURE OF COMMENTS RECEIVED ON PROPOSED CHANGES TO RULE 12-24.003, F.A.C., REQUIREMENTS TO FILE OR TO PAY TAXES BY ELECTRONIC MEANS

Mr. William Stander, Assistant Vice-President, Property Casualty Insurers Association of America, representing over 1000 insurance companies writing approximately 40 percent of all property and casualty premiums sold in Florida, provided comment opposing the hand-entry of values into the 11-page electronic insurance premium tax return. Currently, the return is compiled, printed, and then mailed. The electronic submission is really an electronic submission on the Department's end. Each of the values on the compiled return must be input into the electronic return. There could be up to 800 values just to allocate the premium tax among the localities. Filing returns for three to ten companies would result in thousands of values that would have to be hand-entered. This defeats the purpose of electronic submission of the return.

Mr. Stander continued that there is a substantial potential for errors from simple key stroke errors which could result in penalties being imposed. In addition, the Florida returns are due about the same time as other premium tax returns are due throughout the country.

Mr. Stander recommends two things regarding this proposed rule. First, until the Department is able to provide insurance companies the ability to actually submit this information electronically, he requests the Department not require electronic submission of the insurance premium tax return. From the insurance side, it is actually not electronic at all. Second, he suggests the Department work with vendors to create software to produce the return. Mr. Stander provided written comment, dated October 21, 2010, reiterating the comments orally presented at the workshop.

Mr. Travis Miller, Radey Thomas Yon Clark, Attorneys & Counselors at Law, agreed with the points that were addressed by Mr. Stander associated with manual entry of the data and the potential for errors. In addition, there are hundreds of fields for allocation relating to the police and firefighters' pensions. Proper allocation is a great concern. Mr. Miller encouraged the Department to defer adoption of an electronic filing process that is so key-stroke intensive and to work toward a process to allow insurers to upload the actual data elements from their systems.

Mr. Miller provided written comment, dated October 25, 2010, offering that electronic reporting could be accomplished most efficiently through a mechanism that accepts data or spreadsheets exported from the insurers' systems.

Mr. Tom Clayton agreed with the comments made by Mr. Stander and Mr. Miller.

Mr. Michael Gifford, Liberty Mutual Group, submitted written comment, dated October 21, 2010, on behalf of 38 licensed insurance companies in Florida. Citing the reasons previously presented, Mr. Gifford opposes Florida's mandatory electronic filing method. However, he

would fully support a voluntary program.

Ms. Lise Holiday, Housing Authority Insurance Group, submitted written comments dated October 12, 2010, voicing strong support for incorporating Tri-Tech Premium Pro Enterprise software into the electronic reporting process. This software identifies the mandated entries for the state forms. They are moving toward electronically filing with the states. This method would be an efficient way for the state to acquire electronic filing without investing additional resources, and including Florida in this software would be well received.

SUMMARY OF CHANGES TO PROPOSED RULES:

In response to the comments received, the proposed changes to Rule 12-24.003, F.A.C. (Requirements to File or to Pay Taxes by Electronic Means), have been withdrawn for further development.

SUMMARY OF PUBLIC HEARING

HELD ON FEBRUARY 22, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on February 22, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule 12-24.011, F.A.C. (Public Use Forms). A notice for the public hearing was published in the Florida Administrative Weekly on February 4, 2011 (Vol. 37, No. 5, pp. 319-320).

SUMMARY OF RULE HEARING

HELD ON APRIL 11, 2011

The proposed amendments to Rule 12-24.011, F.A.C. (Public Use Forms), were noticed for a rule hearing in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11,

pp. 664-665). A rule hearing was held on April 11, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one appeared to provide comments. No comments were received.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-24, FLORIDA ADMINISTRATIVE CODE
PAYMENT OF TAXES AND SUBMISSION OF RETURNS BY ELECTRONIC MEANS;
TAXPAYER RECORDKEEPING AND RETENTION REQUIREMENTS
PART I ELECTRONIC FUNDS TRANSFER AND RETURN SUBMISSION
AMENDING RULE 12-24.011

12-24.011 Public Use Forms.

(1)(a) The following public use forms and instructions are utilized by the Department for the purposes of the e-Services Program and are hereby incorporated by reference in this rule.

(b) Copies of the forms may be obtained, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at myflorida.com/dor/forms; or, 2) calling the Department at (800) 352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center or, 4) writing the Florida Department of Revenue, Taxpayer Services, 5050 West Tennessee Street Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32399-0112 32304. Persons with hearing or speech impairments may call the Department’s TDD at (800) 367-8331 or (850) 922-1115.

Form Number	Title	Effective Date
(2) DR-600	Enrollment and Authorization for e-Services Program (R. <u>03/1110/09</u>)	<u>06/10</u>
(3) No change.		

Rulemaking Authority 202.26(3)(a), 206.485(1), 213.06(1), 213.755(8), (9), 220.21(2), (3) FS.

Law Implemented 119.071(5), 202.30, 206.485, 212.08(5)(q), 213.755, 220.21(2), (3), 443.1317,

443.163 FS. History-New 6-1-09, Amended 6-28-10,_____.