

AGENDA
FLORIDA DEPARTMENT OF REVENUE

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

MEMBERS

Governor Charlie Crist
Attorney General Bill McCollum
Chief Financial Officer Alex Sink
Commissioner Charles Bronson

September 28, 2010

Contact: Robert Babin
(850- 487-1453)

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

ITEM	SUBJECT	RECOMMENDATION
1.	Respectfully request approval of the minutes of August 10, 2010. (ATTACHMENT 1)	RECOMMEND APPROVAL
2.	Respectfully request approval and authority to publish Notices of Proposed Rule in the Florida Administrative Weekly (F.A.W.) <u>Adoption of Forms: Public Use Forms</u> General Taxes: Public Use Forms: proposed rule amendments to adopt annual changes to forms used by the Department in the administration of taxes, fees, and surcharges. [<i>Rules 12A-1.097, 12A-16.008, 12B-5.150, 12B-8.003, 12C-1.051, and 12C-2.0115, Florida Administrative Code (F.A.C.)</i>]	RECOMMEND APPROVAL
3.	Respectfully request approval and authority to publish Notices of Proposed Rule in the Florida Administrative Weekly (F.A.W.) <u>General Tax Administration Rules: 2010 Law Changes</u> General Taxes: Update general tax administration rules to implement law changes enacted in 2010. [<i>Rules 12-22.008, 12A-1.094, 12A-1.005, 12A-1.009, 12A-1.0091, 12A-1.0092, 12A-1.011, 12A-1.0161, 12A-1.044, 12A-1.096, 12A-19.041, 12A-19.100, 12B-7.006, 12B-7.008, and 12B-7.026, F.A.C.</i>]	RECOMMEND APPROVAL

4. Respectfully request approval and authority to publish a Notice of Proposed Rule in the Florida Administrative Weekly (F.A.W.)

Sales and Use Tax

Hotel Reward Points Program: proposed new rule to provide when transient accommodations provided to members of hotel reward points programs are subject to the state and local transient rental taxes. [*Rule 12A-1.0615, F.A.C.*]

(ATTACHMENT 4)

RECOMMEND APPROVAL

**MEETING OF THE GOVERNOR AND CABINET
AS HEAD OF THE DEPARTMENT OF REVENUE**

August 10, 2010

MINUTES

With Governor Crist presiding and all members present, the Department of Revenue was convened in LL-03, The Capitol.

The following official actions were taken.

- ITEM 1.** Approved the minutes of June 8, 2010.
- ITEM 2.** Approved and granted authority to publish a Notice of Proposed Rule in the Florida Administrative Weekly, to propose the repeal of obsolete rules related to approving vendors to provide property tax products and services to county government officials. [*Rule 12D-15, Florida Administrative Code*]
- ITEM 3.** Approved and granted authority to adopt, file and certify with the Secretary of State under Chapter 120, Florida Statutes, amendments to Rules 12-13.004, 12-16.004, and 12-17.004, Florida Administrative Code.

These rule amendments will update the Department positions that are authorized to settle taxpayer assessments, enter into closing agreements, and enter into agreements that schedule the payment of taxes. These amendments are necessary to reflect changes to the Department's organizational structure and to make plain language changes.

ATTACHMENT # 1

September 17, 2010

MEMORANDUM

TO: The Honorable Charlie Crist, Governor
Attention: Pat Gleason, Director of Cabinet Affairs

The Honorable Bill McCollum, Attorney General
Attention: Rob Johnson, Cabinet Affairs

The Honorable Alex Sink, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide
Amber Hughes, Cabinet Aide

The Honorable Charles Bronson, Agriculture Commissioner
Attention: Jim Boxold, Chief Cabinet Aide
Cathy Giordano, Cabinet Aide

FROM: Robert Babin, Director of Legislative and Cabinet Services

SUBJECT: Requesting Approval to Hold Public Hearings on Proposed Rules

What is the Department Requesting? The Department requests approval to publish Notices of Proposed Rule to schedule public hearings on annual updates to general tax forms.

Why are These Proposed Rules Necessary? To adopt forms used by the Department that must be revised to incorporate:

- Updated rates,
- Updated instructions, and
- Plain language changes.

What Do These Proposed Rules Do? Adopt revised forms that will be used in calendar year 2011 to submit the following taxes, fees and surcharges:

- Sales and Use Tax
- Solid Waste Fees and Rental Car Surcharge
- Tax on Fuels and Pollutants

ATTACHMENT # 2

Memorandum
September 17, 2010
Page 2

- Insurance Premium Taxes, Fees, and Surcharges
- Corporate Income Tax
- Tax on Governmental Leasehold Estates

[12A-1.097, 12A-16.008, 12B-5.150, 12B-8.003, 12C-1.051, and 12C-2.0115, *Florida Administrative Code*]

Were Comments Received from External Parties? No request was received by the Department to hold the scheduled workshop on August 31, 2010. No written comments have been received by the Department.

Are There Significant Administrative Issues in These Rules? No.

Attached are copies of:

- Summaries of the proposed rules
- Statements of facts and circumstances justifying the rules
- Federal relation statements
- Summaries of workshop
- Proposed Notices of Proposed Rule with proposed rule text

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

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), adopt, by reference, changes to forms used by taxpayers to report sales and use tax to the Department.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), are necessary to adopt, by reference, changes to forms used by the Department in the administration of sales and use 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 August 13, 2010 (Vol. 36, No. 32, pp. 3683-3684), to advise the public of the development of changes to Rule 12A-1.097, F.A.C. (Public Use Forms), and to provide that, if

requested in writing, a rule development workshop would be held on August 31, 2010. No request was received by the Department. No written comments have been received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE NO: RULE TITLE:

12A-1.097 Public Use Forms

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), is to adopt, by reference, changes to forms used by the Department in the administration of sales and use tax.

SUMMARY: The proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), adopt, by reference, changes to forms used by taxpayers to report sales and use tax to the Department.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. 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: 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4., (7), 212.11(5)(b), 212.12(1)(b)2., 212.17(6), 212.18(2), (3), 213.06(1), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2), (7) FS.

LAW IMPLEMENTED: 92.525(1)(b), (3), 95.091, 119.071(5), 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 201.17(1)-(5), 202.11(2), (3), (6), (16), (24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055, 212.06, 212.0606, 212.07(1), (8), (9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1), (4), (5), 212.12(1), (2), (9), (13), 212.13, 212.14(4), (5), 212.17, 212.18(2), (3), 213.235, 213.29, 213.37, 219.07, 288.1258, 376.70, 376.75, 403.717, 403.718, 403.7185,

443.036, 443.121(1), (3), 443.131, 443.1315, 443.1316, 443.171(2), (7) FS.

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 Sarah Wachman at (850)410-2651. 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: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407.

THE FULL TEXT OF THE PROPOSED RULE IS:

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

12A-1.097 Public Use Forms.

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

(a) Copies of these forms, except those denoted by an asterisk (*), are available, without cost, by one or more of the following methods: 1) downloading the form from the Department's Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 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.

(b) Forms (certifications) specifically denoted by an asterisk (*) are issued by the Department upon final approval of the appropriate application. Defaced copies of certifications, for purposes of example, may be obtained by written request directed to:

Florida Department of Revenue
Taxpayer Services

5050 West Tennessee Street, ~~Bldg. L~~

Tallahassee, Florida 32399-0112.

Form Number	Title	Effective Date
(2) through (4)	No change.	
(5)(a) DR-7	Consolidated Sales and Use Tax Return (R. <u>01/11</u> 01/10)	<u>01/10</u>
(b) DR-7N	Instructions for Consolidated Sales and Use Tax Return (R. <u>01/11</u> 01/10)	<u>01/10</u>
(c) DR-15CON	Consolidated Summary - Sales and Use Tax Return (R. <u>01/11</u> 01/10)	<u>01/10</u>
(6)(a) DR-15	Sales and Use Tax Return (R. <u>01/11</u> 01/10)	<u>01/10</u>
(b) DR-15CS	Sales and Use Tax Return (R. <u>01/11</u> 01/10)	<u>01/10</u>
(c) DR-15CSN	DR-15 Sales and Use Tax - Instructions (R. <u>01/11</u> 01/10)	<u>01/10</u>
(d) DR-15EZ	Sales and Use Tax Return (R. <u>01/11</u> 01/10)	<u>01/10</u>
(e) DR-15EZCSN	DR-15EZ Sales and Use Tax Return - Instructions (R. <u>01/11</u> 01/10)	<u>01/10</u>
(f) DR-15EZN	Instructions for <u>2011</u> 2010 DR-15EZ Sales and Use Tax Returns (R. <u>01/11</u> 01/10)	<u>01/10</u>
(g)	No Change.	
(h) DR-15MO	Florida Tax on Purchases (R. <u>09/10</u> 08/09)	<u>01/10</u>
(i) DR-15N	Instructions for <u>2011</u> 2010 DR-15 Sales and Use Tax Returns (R. <u>01/11</u> 01/10)	<u>01/10</u>

(j) through (m) No change.

(7) through (23) No change.

Rulemaking Authority: 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4., (7), 212.11(5)(b), 212.12(1)(b)2., 212.17(6), 212.18(2), (3), 213.06(1), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2), (7) FS. Law

Implemented: 92.525(1)(b), (3), 95.091, 119.071(5), 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 201.17(1)-(5), 202.11(2), (3), (6), (16), (24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055, 212.06, 212.0606, 212.07(1), (8), (9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1), (4), (5), 212.12(1), (2), (9), (13), 212.13, 212.14(4), (5), 212.17, 212.18(2), (3), 213.235, 213.29, 213.37, 219.07, 288.1258, 376.70, 376.75, 403.717, 403.718, 403.7185, 443.036, 443.121(1), (3), 443.131, 443.1315, 443.1316, 443.171(2), (7) FS. History-New 4-12-84, Formerly 12A-1.97, Amended 8-10-92, 11-30-97, 7-1-99, 4-2-00, 6-28-00, 6-19-01, 10-2-01, 10-21-01, 8-1-02, 4-17-03, 5-4-03, 6-12-03, 10-1-03, 9-28-04, 6-28-05, 5-1-06, 4-5-07, 1-1-08, 4-1-08, 6-4-08, 1-27-09, 9-1-09, 11-3-09, 1-11-10, 4-26-10, 6-28-10, 7-12-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet Young, Tax Law Specialist,
Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443,
Tallahassee, Florida 32314-7443, telephone (850)922-9407.

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 August 13,
2010 (Vol. 36, No. 32, pp. 3683-3684). No request was received by the Department to hold a
workshop. No written comments have been received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-16, FLORIDA ADMINISTRATIVE CODE
RENTAL CAR SURCHARGE
AMENDING RULE 12A-16.008

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12A-16.008, F.A.C. (Public Use Forms), will update annual forms used by the Department in the administration of solid waste fees and the rental car surcharge.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendments to Rule 12A-16.008, F.A.C. (Public Use Forms), are necessary to adopt, by reference, changes to forms used by the Department in the administration of solid waste fees and the rental car surcharge.

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 August 13, 2010 (Vol. 36, No. 32, p. 3684), to advise the public of the development

of changes to Rule 12A-16.008, F.A.C. (Public Use Forms), and to provide that, if requested in writing, a rule development workshop would be held on August 31, 2010. No request was received by the Department. No written comments have been received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

RENTAL CAR SURCHARGE

RULE NO: RULE TITLE:

12A-16.008 Public Use Forms

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-16.008, F.A.C. (Public Use Forms), is to adopt, by reference, changes to forms used by the Department in the administration of solid waste fees and the rental car surcharge.

SUMMARY: The proposed amendments to Rule 12A-16.008, F.A.C. (Public Use Forms), will update annual forms used by the Department in the administration of solid waste fees and the rental car surcharge.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. 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: 212.0606, 212.12(2), 213.235, 376.70, 403.717, 403.718, 403.7185 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 Sarah Wachman at (850)410-2651. 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: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-16, FLORIDA ADMINISTRATIVE CODE
RENTAL CAR SURCHARGE
AMENDING RULE 12A-16.008

12A-16.008 Public Use Forms.

(1)(a) The following public use forms and instructions are employed by the Department of Revenue in its dealings with the public in administering the rental car surcharge, as provided in this rule chapter, and the solid waste fees, as provided in Rule Chapter 12A-12, F.A.C. These forms are hereby incorporated by reference in this rule.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 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-15SW	Solid Waste and Surcharge Return	
	(R. <u>01/11 01/10</u>)	<u> </u> 01/10
(3) DR-15SWN	Instructions for DR-15SW Solid Waste	

(4) No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.0606,
212.12(2), 213.235, 376.70, 403.717, 403.718, 403.7185 FS. History-New 11-14-89, Amended
7-7-91, 8-10-92, 3-21-95, 6-19-01, 4-17-03, 9-28-04, 6-28-05, 7-25-06, 4-5-07, 1-1-08, 1-27-09,
1-11-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet Young, Tax Law Specialist,
Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443,
Tallahassee, Florida 32314-7443, telephone (850)922-9407.

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 August 13,
2010 (Vol. 36, No. 32, p. 3684). No request was received by the Department to hold a workshop.
No written comments have been received by the Department.

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 RULE 12B-5.150

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12B-5.150, F.A.C. (Public Use Forms), adopt, by reference, changes to forms used by the Department in the administration of taxes imposed on fuels and pollutants.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendments to Rule 12B-5.150, F.A.C. (Public Use Forms), are necessary to adopt, by reference, changes to forms used by the Department in the administration of taxes imposed on fuels and pollutants.

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 August 13, 2010 (Vol. 36, No. 32, pp. 3685-3686), to advise the public of the development of changes to Rule 12B-5.150, F.A.C. (Public Use Forms), and to provide that, if requested in writing, a rule development workshop would be held on August 31, 2010. No request was received by the Department. No written comments have been received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

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

RULE NO: RULE TITLE:

12B-5.150 Public Use Forms

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-5.150, F.A.C. (Public Use Forms), is to adopt, by reference, changes to forms used by the Department in the administration of taxes imposed on fuels and pollutants.

SUMMARY: The proposed amendments to Rule 12B-5.150, F.A.C. (Public Use Forms), adopt, by reference, changes to forms used by the Department in the administration of taxes imposed on fuels and pollutants.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. 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, 206.095, 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, 206.9943, 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 Sarah Wachman at (850)410-2651. 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: Ron Gay, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4732.

THE FULL TEXT OF THE PROPOSED RULE IS:

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

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) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 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-138	Application for Fuel Tax Refund – Agriculture, Aquacultural, Commercial Fishing or Commercial Aviation Purposes (R. <u>01/11 01/10</u>)	<u>01/10</u>

(3) through (9) No change.

(10) DR-160	Application for Fuel Tax Refund – Mass Transit System Users (R. <u>01/11</u> 01/10)	____ 01/10
(11) through (13) No change.		
(14) DR-182	Florida Air Carrier Fuel Tax Return (R. <u>01/11</u> 01/10)	____ 01/10
(15) No change.		
(16) DR-189	Application for Fuel Tax Refund – Municipalities, Counties and School Districts (R. <u>01/11</u> 01/10)	____ 01/10
(17) DR-190	Application for Fuel Tax Refund – Non-Public Schools (R. <u>01/11</u> 01/10)	____ 01/10
(18) No change.		
(19) DR-248	<u>2011</u> 2010 Alternative Fuel Use Permit Application, Renewal, and Decal Order Form (R. <u>11/10</u> 11/09)	____ 01/10
(20) DR-904	Pollutants Tax Return (R. <u>01/11</u> 01/10)	____ 01/10
(21) DR-309631	Terminal Supplier Fuel Tax Return (R. <u>01/11</u> 01/10)	____ 01/10
(22) DR-309631N	Instructions for Filing Terminal Supplier Fuel Tax Return (R. <u>01/11</u> 01/10)	____ 01/10
(23) DR-309632	Wholesaler/Importer Fuel Tax Return (R. <u>01/11</u> 01/10)	____ 01/10
(24) DR-309632N	Instructions for Filing Wholesaler/Importer Fuel Tax Return (R. <u>01/11</u> 01/10)	____ 01/10
(25) DR-309633	Mass Transit System Provider Fuel Tax Return	

	(R. <u>01/11</u> 01/10)	_____ 01/10
(26) DR-309633N	Instructions for Filing Mass Transit System Provider Fuel Tax Return (R. <u>01/11</u> 01/10)	_____ 01/10
(27) DR-309634	Local Government User of Diesel Fuel Tax Return (R. <u>01/11</u> 01/10)	_____ 01/10
(28) DR-309634N	Instructions for Filing Local Government User of Diesel Fuel Tax Return (R. <u>01/11</u> 01/10)	_____ 01/10
(29) DR-309635	Blender/Retailer of Alternative Fuel Tax Return (R. <u>01/11</u> 01/10)	_____ 01/10
(30) DR-309635N	Instructions for Filing Blender/Retailer of Alternative Fuel Tax Return (R. <u>01/11</u> 01/10)	_____ 01/10
(31) DR-309636	Terminal Operator Information Return (R. <u>01/11</u> 01/10)	_____ 01/10
(32) DR-309636N	Instructions for Filing Terminal Operator Alternative Fuel Tax Return (R. <u>01/11</u> 01/10)	_____ 01/10
(33) DR-309637	Petroleum Carrier Information Return Alternative Fuel Tax Return (R. <u>01/11</u> 01/10)	_____ 01/10
(34) DR-309637N	Instructions for Filing Petroleum Carrier Information Return (R. <u>01/11</u> 01/10)	_____ 01/10
(35) DR-309638	Exporter Fuel Tax Return (R. <u>01/11</u> 01/10)	_____ 01/10
(36) DR-309638N	Instructions for Filing Exporter Fuel Tax Return (R. <u>01/11</u> 01/10)	_____ 01/10
(37) DR-309639	Application for Refund of Tax Paid on Undyed	

	Diesel Used for Off-Road or Other Exempt	
	Purposes (with Instructions) (R. <u>01/11</u> 01/10)	<u>01/10</u>
(38) DR-309640	Application for Refund of Tax Paid on Undyed Diesel Consumed by Motor Coaches During Idle Time in Florida (R. <u>01/11</u> 01/10)	<u>01/10</u>
(39) DR-309645	<u>2011</u> 2010 Refundable Portion of Local Option and State Comprehensive Enhanced Transportation System (SCETS) Tax (R. <u>01/11</u> 01/10)	<u>01/10</u>
(40) DR-309660	Application for Pollutant Tax Refund (R. <u>01/11</u> 01/09)	<u>04/09</u>
(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, 206.095, 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, 206.9943, 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,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ron Gay, Tax Law Specialist,
Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443,
Tallahassee, Florida 32314-7443, telephone (850)922-4732.

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 August 13,
2010 (Vol. 36, No. 32, pp. 3685-3686). No request was received by the Department to hold a
workshop. No written comments have been received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-8, FLORIDA ADMINISTRATIVE CODE
INSURANCE PREMIUM TAXES, FEES AND SURCHARGES
AMENDING RULE 12B-8.003

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12B-8.003, F.A.C. (Tax Statement, Overpayments), adopt, by reference, changes to forms used by the Department in the administration of the insurance premium tax.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendments to Rule 12B-8.003, F.A.C. (Tax Statement; Overpayments), are necessary to adopt, by reference, changes to forms used by the Department in the administration of the insurance premium 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 August 13, 2010 (Vol. 36, No. 32, p. 3687), to advise the public of the development

of changes to Rule 12B-8.003, F.A.C. (Tax Statement; Overpayments), and to provide that, if requested in writing, a rule development workshop would be held on August 31, 2010. No request was received by the Department. No written comments have been received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

INSURANCE PREMIUM TAXES, FEES AND SURCHARGES

RULE NO: RULE TITLE:

12B-8.003 Tax Statement; Overpayments

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-8.003, F.A.C. (Tax Statement; Overpayments), is to adopt, by reference, changes to forms used by the Department in the administration of the insurance premium tax.

SUMMARY: The proposed amendments to Rule 12B-8.003, F.A.C. (Tax Statement, Overpayments), adopt, by reference, changes to forms used by the Department in the administration of the insurance premium tax.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. 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) FS.

LAW IMPLEMENTED: 175.041, 175.101, 175.1015, 175.111, 175.121, 175.141, 175.151, 185.02, 185.03, 185.08, 185.085, 185.09, 185.10, 185.12, 185.13, 213.05, 213.053, 213.235, 213.37, 220.183, 220.19, 220.191, 252.372, 288.99, 440.51, 443.1216, 624.11, 624.402, 624.4072, 624.4094, 624.4621, 624.4625, 624.475, 624.501, 624.509, 624.5091, 624.5092, 624.50921, 624.510, 624.5105, 624.5107, 624.511, 624.515, 624.516, 624.518, 624.519, 624.520, 624.521, 624.601, 624.610, 626.7451(11), 627.311, 627.351, 627.3512, 627.357(9), 627.7711, 627.943, 628.6015, 629.401, 629.5011, 631.72, 632.626, 634.131, 634.313(2),

634.415(2), 636.066, 642.0301, 642.032, FS., Ch. 93-128, s. 29, Ch. 2005-280, L.O.F.

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 Sarah Wachman at (850)410-2651. 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: Terry Branch, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone 850-922-4700.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-8, FLORIDA ADMINISTRATIVE CODE
INSURANCE PREMIUM TAXES, FEES AND SURCHARGES
AMENDING RULE 12B-8.003

12B-8.003 Tax Statement; Overpayments.

(1) Tax returns and reports shall be made by insurers on forms prescribed by the Department. These forms are hereby incorporated by reference in this rule.

(2) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 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.

(3) through (4) No change.

Form Number	Title	Effective Date
(5)(a) DR-907	Florida Insurance Premium Installment Payment (R. <u>01/11</u> 01/10)	___ 01/10
(b) DR-907N	Information for Filing Insurance Premium Installment Payment (Form DR-907)	

	(R. <u>01/11</u> 01/10)	___ 01/10
(6)(a) DR-908	Insurance Premium Taxes and Fees Return for Calendar Year <u>2010</u> 2009 (R. <u>01/11</u> 01/10)	___ 01/10
(b) DR-908N	Instructions for Preparing Form DR-908 Florida Insurance Premium Taxes and Fees Return (R. <u>01/11</u> 01/10)	___ 01/10
(7) DR-350900	<u>2010</u> 2009 Insurance Premium Tax Information for Schedules XII and XIII, DR-908 (R. <u>01/11</u> 01/10)	___ 01/10

Rulemaking Authority 213.06(1) FS. Law Implemented 175.041, 175.101, 175.1015, 175.111, 175.121, 175.141, 175.151, 185.02, 185.03, 185.08, 185.085, 185.09, 185.10, 185.12, 185.13, 213.05, 213.053, 213.235, 213.37, 220.183, 220.19, 220.191, 252.372, 288.99, 440.51, 443.1216, 624.11, 624.402, 624.4072, 624.4094, ~~624.402~~, 624.4621, 624.4625, 624.475, 624.501, 624.509, 624.5091, 624.5092, 624.50921, 624.510, 624.5105, 624.5107, 624.511, 624.515, 624.516, 624.518, 624.519, 624.520, 624.521, 624.601, 624.610, 626.7451(11), 627.311, 627.351, 627.3512, 627.357(9), 627.7711, 627.943, 628.6015, 629.401, 629.5011, 631.72, 632.626, 634.131, 634.313(2), 634.415(2), 636.066, 642.0301, 642.032, FS., Ch. 93-128, s. 29, Ch. 2005-280, L.O.F. History–New 2-3-80, Formerly 12B-8.03, Amended 3-25-90, 3-10-91, 2-18-93, 6-16-94, 12-9-97, 3-23-98, 7-1-99, 10-15-01, 8-1-02, 5-4-03, 9-28-04, 6-28-05, 6-20-06, 4-5-07, 1-1-08, 1-27-09, 1-11-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Terry Branch, Tax Law Specialist,
Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443,
Tallahassee, Florida 32314-7443, telephone 850-922-4700.

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 August 13,
2010 (Vol. 36, No. 32, p. 3687). No request was received by the Department to hold a workshop.
No written comments have been received by the Department.

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

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12C-1.051, F.A.C. (Forms), adopt, by reference, updates for the jobs for the unemployed tax credit and changes to forms used by the Department in the administration of the corporate income tax.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Section 13, Chapter 2010-147, L.O.F., creates Section 220.1896, F.S., authorizing a jobs for the unemployed tax credit against corporate income tax. The proposed amendments to Rule 12C-1.051, F.A.C. (Forms), are necessary to adopt, by reference, changes to forms used by the Department in the administration of the corporate income tax, including instructions on how to take the jobs for the unemployed tax credit.

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 August 13, 2010 (Vol. 36, No. 32, pp. 3687-3688), to advise the public of the development of changes to Rule 12C-1.051, F.A.C. (Forms), and to provide that, if requested in writing, a rule development workshop would be held on August 31, 2010. No request was received by the Department. No written comments have been received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

CORPORATE INCOME TAX

RULE NO. RULE TITLE:

12C-1.051 Forms

PURPOSE AND EFFECT: Section 13, Chapter 2010-147, L.O.F., creates Section 220.1896, F.S., authorizing a jobs for the unemployed tax credit against corporate income tax. The purpose of the proposed amendments to Rule 12C-1.051, F.A.C. (Forms), is to adopt, by reference, changes to forms used by the Department in the administration of the corporate income tax, including instructions on how to take the jobs for the unemployed tax credit.

SUMMARY: The proposed amendments to Rule 12C-1.051, F.A.C. (Forms), adopt, by reference, updates for the jobs for the unemployed tax credit and changes to forms used by the Department in the administration of the corporate income tax.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. 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), 220.187, 220.1896(9), 220.192(5), (7), 220.193(4), 220.51, 288.9921, 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, 220.1895, 220.1896, 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, 288.9916, 624.51055, 1002.395 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 Sarah Wachman at (850)410-2651. 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: Charles Dunning, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4700.

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-1.051

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) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 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) and (3)	No change.	
(4)(a) F-1065	Florida Partnership Information Return (R. <u>01/11 01/10</u>)	<u> </u> 01/10
(b) F-1065N	Instructions for Preparing Form F-1065 Florida	

	Partnership Information Return	
	(R. <u>01/11</u> 01/10)	___ 01/10
(5) F-1120A	Florida Corporate Short Form Income	
	Tax Return (R. <u>01/11</u> 01/10)	___ 01/10
(6)(a) F-1120	Florida Corporate Income/Franchise and	
	Emergency Excise Tax Return (R. <u>01/11</u> 01/10)	___ 01/10
(b) F-1120N	F-1120 Instructions – Corporate Income/Franchise	
	and Emergency Excise Tax Return for taxable years	
	beginning on or after January 1, <u>2010</u> 2009	
	(R. <u>01/11</u> 01/10)	___ 01/10
(7) F-1120ES	Declaration/Installment of Florida Estimated	
	Income/Franchise and Emergency Excise Tax	
	for Taxable Year Beginning on or after January 1,	
	<u>2011</u> 2010 (R. <u>01/11</u> 01/10)	___ 01/10
(8) through (12)	No change.	
(13)(a) F-1193	Application for Florida Renewable Energy	
	Production Credit Allocation (R. <u>01/11</u> 01/10)	___ 04/10
(b) F-1193T	Notice of Intent to Transfer A Florida Energy Tax	
	Credit (R. <u>01/11</u> 12/09)	___ 04/10
(14)	No change.	
(15) F-7004	Florida Tentative Income/Franchise and	
	Emergency Excise Tax Return and Application	
	for Extension of Time to File Return	

Rulemaking Authority 213.06(1), 220.187, 220.1896(9), 220.192(5), (7), 220.193(4), 220.51, 288.9921, 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, ~~220.187~~, 220.1875, 220.1895, 220.1896, 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, 288.9916, 624.51055, 1002.395 FS. History-New 9-26-77, Amended 12-18-83, Formerly 12C-1.51, Amended 12-21-88, 12-31-89, 1-31-91, 4-8-92, 12-7-92, 1-3-96, 3-18-96, 3-13-00, 6-19-01, 8-1-02, 6-19-03, 3-15-04, 9-24-04, 6-28-05, 5-1-06, 4-5-07, 1-1-08, 1-27-09, 1-11-10, 4-26-10(12)(a), (b), 4-26-10(13)(a), (b), 6-28-10, ____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Charles Dunning, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4700.

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 August 13, 2010 (Vol. 36, No. 32, pp. 3687-3688). No request was received by the Department to hold a workshop. No written comments have been received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-2, FLORIDA ADMINISTRATIVE CODE
INTANGIBLE PERSONAL PROPERTY TAX
AMENDING RULE 12C-2.0115

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12C-2.0115, F.A.C. (Public Use Forms), adopt, by reference, the updates to forms used by the Department in the administration of the tax on government leasehold estates and to the 2011 Valuation Factor Table.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendments to Rule 12C-2.0115, F.A.C. (Public Use Forms), are necessary to adopt, by reference, changes to the forms used by the Department in the administration of the tax on governmental leasehold estates and to provide the 2011 Valuation Factor Table used to calculate the amount of tax due.

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 August 13, 2010 (Vol. 36, No. 32, p. 3688), to advise the public of the development of changes to Rule 12C-2.0115, F.A.C. (Public Use Forms), and to provide that, if requested in writing, a rule development workshop would be held on August 31, 2010. No request was received by the Department. No written comments have been received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

INTANGIBLE PERSONAL PROPERTY TAX

RULE NO: RULE TITLE:

12C-2.0115 Public Use Forms

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12C-2.0115, F.A.C. (Public Use Forms), is to adopt, by reference, changes to the forms used by the Department in the administration of the tax on governmental leasehold estates and to provide the 2011 Valuation Factor Table used to calculate the amount of tax due.

SUMMARY: The proposed amendments to Rule 12C-2.0115, F.A.C. (Public Use Forms), adopt, by reference, the updates to forms used by the Department in the administration of the tax on government leasehold estates and to the 2011 Valuation Factor Table.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. 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: 199.202(2), 213.06(1) FS.

LAW IMPLEMENTED: 119.071(5), 196.199(2), 199.135, 199.232, 199.292 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 Sarah Wachman at (850)410-2651. 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: Tim Phillips, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4700.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-2, FLORIDA ADMINISTRATIVE CODE
INTANGIBLE PERSONAL PROPERTY TAX
AMENDING RULE 12C-2.0115

12C-2.0115 Public Use Forms.

(1)(a) The following public use forms and instructions are employed by the Department in its dealings with the public related to administration of the intangible tax. These forms are hereby incorporated and made a part of this rule by reference.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 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-601G	<u>Governmental Government</u> Leasehold Intangible Personal Property Tax Return for <u>2011</u> <u>2010</u> Tax Year (R. <u>01/11 01/10</u>)	<u>01/10</u>

(3) through (5) No change.

Rulemaking Authority 199.202(2), 213.06(1) FS. Law Implemented 119.071(5), 196.199(2),
199.135, 199.232, 199.292 FS. History-New 11-21-91, Amended 1-5-94, 10-9-01, 5-4-03, 9-28-
04, 6-28-05, 10-30-06, 1-28-08, 1-27-09, 1-31-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tim Phillips, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4700.

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 August 13, 2010 (Vol. 36, No. 32, p. 3688). No request was received by the Department to hold a workshop. No written comments have been received by the Department.

September 17, 2010

MEMORANDUM

TO: The Honorable Charlie Crist, Governor
Attention: Pat Gleason, Director of Cabinet Affairs

The Honorable Bill McCollum, Attorney General
Attention: Rob Johnson, Cabinet Affairs

The Honorable Alex Sink, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide
Amber Hughes, Cabinet Aide

The Honorable Charles Bronson, Agriculture Commissioner
Attention: Jim Boxold, Chief Cabinet Aide
Cathy Giordano, Cabinet Aide

FROM: Robert Babin, Director of Legislative and Cabinet Services

SUBJECT: Requesting Approval to Hold Public Hearings on Proposed Rules

What is the Department Requesting? The Department requests approval to publish Notices of Proposed Rule to schedule public hearings for proposed general tax rules.

Why are These Proposed Rules Necessary? These changes amend general tax rules to include statutory changes passed during the 2010 legislative session. Specifically, these amendments include changes to the following rules:

Communications Services Tax

These changes administratively implement Chapters 2010-149, 2010-138, and 2010-83, Laws of Florida, which relate to minor rate changes, residential service exemptions, and claiming bad debt credits. [*Rules 12A-19.041 and 12A-19.100, Florida Administrative Code / F.A.C.*]

ATTACHMENT # 3

Sales and Use Tax

Admissions: These changes administratively implement Chapter 2010-147, Laws of Florida, which clarifies the exemption for professional sporting events and the exemption for events sponsored by a government entity, sports authority, or sports commission. [Rule 12A-1.005, F.A.C.]

Non-Residential Cleaning and Pest Control Services: To administratively implement Chapters 2009-51 and 2010-138, Laws of Florida, which replace obsolete Standard Industry Codes with updated North American Industry Classification System codes that define the taxation of nonresidential building cleaning services and pest control services. [Rules 12A-1.009, 12A-1.0091, and 12A-1.0092, F.A.C.]

Packages of Food Products and Other Items: To administratively implement Chapter 2010-138, Laws of Florida, to clarify the taxation of packages that contain both exempt food products and tangible property. [Rule 12A-1.011, F.A.C.]

Sales and Use Tax on Services; Sale for Resale: To remove obsolete provisions relating to the taxability of services before September 1, 1992. [Rule 12A-1.0161, F.A.C.]

Vending Machines: To administratively implement Chapter 2010-138, Laws of Florida, to include notice requirements on vending machines. [Rule 12A-1.044, F.A.C.]

Productive Output Measurement Period: To administratively implement Chapter 2010-147, Laws of Florida, regarding the definition of “productive output.” [Rule 12A-1.096, F.A.C.]

Public Works Contracts: To administratively implement Chapter 2010-138, Laws of Florida, requiring governmental entities (excluding the federal government) to issue a Certificate of Entitlement to purchase materials tax-exempt for public works projects. [Rule 12A-1.094, F.A.C.]

Severance Taxes, Fees, and Surcharges

Exemptions and Credits: To administratively implement Chapters 2010-166 and 2010-24, Laws of Florida, which relate to claiming the Florida Tax Credit Scholarship Program Credit against Florida’s Severance Tax. [Rules 12B-7.006, 12B-7.008, and 12B-7.026, F.A.C.]

Administrative Rules

Warrants and Liens List: To administratively implement Chapters 2010-138 and 2010-166, Laws of Florida, authorizing the Department to publish a list of taxpayers against whom the Department has filed a warrant, notice of lien or judgment lien certificate.
[Rule 12-22.008, F.A.C.]

What Do These Proposed Rules Do?

Communications Services Tax

The rule amendments implement statutory changes that clarify that apartment residences also qualify for the residential household exemption from the communications services tax. These amendments also adopt, by reference, changes to the communications services tax returns, to reflect the 2010 law changes on reporting the tax, and to update the local tax rates, as added or changed by the local jurisdictions.

Sales and Use Tax

Admissions: The proposed amendments implement statutory changes that expand the exemption for admissions to certain professional sporting events and the exemption for events sponsored by a governmental entity, sports authority, or sports commission.

Services: The proposed amendments implement statutory changes that substitute new North American Industry Classification System codes for the obsolete Standard Industry Classification codes that were in the statute. The amendments also provide examples of services included under the new codes.

Packages of Food Products and Other Items: The proposed amendment implements the statutory change that provides that packages that contain both exempt food products and taxable items are not taxable, as long as the taxable item does not exceed 25 percent of the total value of the item.

Sales and Use Tax on Services; Sale for Resale: Remove obsolete provisions in the rule.

Vending Machines: The proposed amendments implement statutory changes to the notices that must be affixed to vending machines. These changes clarify how to report unlicensed vendors.

Productive Output Measurement Period: The proposed amendments implement a new statutory definition of “productive output” to provide additional ways for an expanding business to qualify for exemption.

Public Works Contract: The proposed amendments implement a new statutory requirement that requires government entities to provide certificates to vendors when they purchase items for public works contracts.

Severance Taxes, Fees, and Surcharges

Exemptions and Credits: The proposed amendment implements statutory changes to severance tax forms and instructions to incorporate changes to Florida’s Tax Scholarship Credit. The rule on exemptions and tax credits is being updated to reflect the severance tax credit beginning January 1, 2011 and to make other clarifying changes.

Administrative Rules

Warrants and Liens List: This rule establishes the procedures for implementing the statutory authority to publish and maintain the Warrants and Liens List, containing taxpayers who have an outstanding warrant, lien, or judgment lien for taxes, interest, penalty, and/or fees administered by the Department.

Were Comments Received from External Parties?

A rule development workshop was conducted on August 25, 2010, for Rule 12A-1.094, F.A.C. to receive public comments. To address the concerns of local government entities, changes were made to clarify the proposed provisions added to the rule to incorporate the provisions of the new law.

The Department was also asked to consider allowing the tax-exemption for direct purchases by governmental entities to apply to contractors who furnish and install tangible personal property, or, if not allowed, to clarify the rule to reflect the Department’s position. Changes to the proposed rule clarify that contractors, not the governmental entity, are deemed to be the ultimate consumers of the articles of tangible personal property they manufacture, fabricate, or furnish in performing contracts to improve public works, and therefore, they cannot accept a Certificate of Entitlement for those articles.

No requests for workshop or comments were received.

Memorandum
September 17, 2010
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Are There Significant Administrative Issues in These Rules? No.

Attached are copies of:

- Summaries of the proposed rules
- Statements of facts and circumstances justifying the rules
- Federal relation statements
- Summaries of workshop
- Proposed Notices of Proposed Rule with proposed rule text

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-19, FLORIDA ADMINISTRATIVE CODE
COMMUNICATIONS SERVICES TAX
AMENDING RULES 12A-19.041 AND 12A-19.100

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12A-19.041, F.A.C.: (1) amend the title to "Sales of Communications Services to a Residential Household" and the scope of the rule to clarify the intent of the application of the rule, as amended; (2) update provisions regarding the state portion and gross receipts tax portion of the Florida communications services tax for purposes of the residential exemption, as provided in Chapter 2010-149, L.O.F.; (3) include the definition of "transient public lodging establishment," as defined in Section 509.013, F.S., as amended by Chapter 2008-55, L.O.F.; (4) clarify that the residential exemption from communications services tax does not apply to "transient public lodging establishments," as provided in Section 4, Chapter 2010-138, L.O.F.; and (5) update the term "service provider" to "dealer" of communications services.

The proposed amendments to Rule 12A-19.100, F.A.C. (Public Use Forms): (1) incorporate the instructions to report tax due on communications services billed on or after August 1, 2010, and provide for the components of the communications services tax collected to be shown on Form DR-700016, Florida Communications Services Tax Return, and Form DR-700019, Communications Services Use Tax Return, as provided in Chapter 2010-149, L.O.F.; (2) provide in the instructions of Form DR-700016 that the residential exemption from the

communications services tax does not include any transient public lodging establishment, as clarified in section 4, Chapter 2010-138, L.O.F.; (3) provide for the reporting of bad debt credits consistent with the provisions of Chapter 2010-83, L.O.F.; (4) provide which version of Form DR-700016, Florida Communications Services Tax Return, is to be used to report communications services tax on services billed during the calendar year; (5) update the local communications services tax rates; (6) adopt, by reference, changes to Forms DR-700016 and DR-700019 necessary to incorporate the law changes and the rate local communications services tax rates; and (7) update the information on how to obtain copies of forms from the Department.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

Chapter 2010-149, L.O.F., provides that for communications services billed on or after August 1, 2010, the state portion of the Florida communications services tax rate for certain services is reduced 0.15 percent from 6.8 percent to 6.65 percent, and the gross receipts tax rate on those services has increased 0.15 percent from 2.37 percent to 2.52 percent. Communications services billed to a residential household on or after August 1, 2010, will be subject to the 2.37 percent gross receipts tax and will remain exempt from the 6.65 percent state portion of the tax. Such services will also be exempt from the additional gross receipts tax rate of 0.15 percent, ensuring that no person will pay any additional tax.

Chapter 2008-55, L.O.F., amended Section 509.013, F.S., redefining "public lodging establishments" as "transient public lodging establishments" and "nontransient public lodging establishments." Section 4, Chapter 2010-138, L.O.F., clarifies that the residential exemption from the communications services tax does not include any "transient public lodging establishment."

Effective July 1, 2010, Chapter 2010-83, L.O.F., allows communications services tax dealers to use a proportionate method to allocate bad debts based on current gross taxes due to determine the amount of bad debt that is attributable to the state and to the local jurisdiction or another reasonable allocation method approved by the Department. Dealers report the bad debit credit on Form DR-700016, Florida Communications Services Tax Return, by deducting the bad debit credit from the state tax or from the local jurisdiction tax due to the Department. The amount of the credit deducted and reported on the return is limited to the amount of state tax due or the amount of local jurisdiction tax due.

The proposed rule amendments to Chapter 12A-19, F.A.C., are necessary to: (1) provide the tax rate changes for communications services sold to residential households, as provided in Chapter 2010-149, L.O.F.; (2) clarify that the residential exemption does not include any transient public lodging establishment, as provided in Section 4, Chapter 2010-138, L.O.F.; (3) provide for the reporting of bad debt credits consistent with the provisions of Chapter 2010-83, L.O.F.; (4) provide the applicable reporting periods and service billing dates for each version of Form DR-700016, Florida Communications Services Tax Return; (5) update the local communications services tax rates; (6) adopt, by reference, updates to Form DR-700016, Communications Services Tax Return, and Form DR-700019, Communications Services Use Tax Return, necessary to incorporate the law changes and the rate local communications services tax rates and (7) update the information on how to obtain copies of forms from the Department.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT

A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on August 13, 2010 (Vol. 36, No. 32, pp. 3684-3685), to advise the public of the development of changes to Rule 12A-19.041, F.A.C. (Sales of Communications Services to a Residential Household), and Rule 12A-19.100, F.A.C. (Public Use Forms), and to provide that, if requested in writing, a rule development workshop would be held on August 31, 2010. No request was received by the Department. No written comments have been received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

COMMUNICATIONS SERVICES TAX

RULE NO: RULE TITLE:

12A-19.041 Sales of Communications Services to a Residential Household

12A-19.100 Public Use Forms

PURPOSE AND EFFECT: Chapter 2010-149, L.O.F., provides that for communications services billed on or after August 1, 2010, the state portion of the Florida communications services tax rate for certain services is reduced 0.15 percent from 6.8 percent to 6.65 percent, and the gross receipts tax rate on those services has increased 0.15 percent from 2.37 percent to 2.52 percent. Communications services billed to a residential household on or after August 1, 2010, will be subject to the 2.37 percent gross receipts tax and will remain exempt from the 6.65 percent state portion of the tax. Such services will also be exempt from the additional gross receipts tax rate of 0.15 percent, ensuring that no person will pay any additional tax.

Chapter 2008-55, L.O.F., amended Section 509.013, F.S., redefining "public lodging establishments" as "transient public lodging establishments" and "nontransient public lodging establishments." Section 4, Chapter 2010-138, L.O.F., clarifies that the residential exemption from the communications services tax does not include any "transient public lodging establishment."

Effective July 1, 2010, Chapter 2010-83, L.O.F., allows communications services tax dealers to use a proportionate method to allocate bad debts based on current gross taxes due to determine the amount of bad debt that is attributable to the state and to the local jurisdiction or another reasonable allocation method approved by the Department. Dealers report the bad debit

credit on Form DR-700016, Florida Communications Services Tax Return, by deducting the bad debit credit from the state tax or from the local jurisdiction tax due to the Department. The amount of the credit deducted and reported on the return is limited to the amount of state tax due or the amount of local jurisdiction tax due.

The purpose of the proposed rule amendments to Chapter 12A-19, F.A.C., is to: (1) provide the tax rate changes for communications services sold to residential households, as provided in Chapter 2010-149, L.O.F.; (2) clarify that the residential exemption does not include any transient public lodging establishment, as provided in Section 4, Chapter 2010-138, L.O.F.; (3) provide for the reporting of bad debt credits consistent with the provisions of Chapter 2010-83, L.O.F.; (4) provide the applicable reporting periods and service billing dates for each version of Form DR-700016, Florida Communications Services Tax Return; (5) update the local communications services tax rates; (6) adopt, by reference, updates to Form DR-700016, Communications Services Tax Return, and Form DR-700019, Communications Services Use Tax Return, necessary to incorporate the law changes and the rate local communications services tax rates and (7) update the information on how to obtain copies of forms from the Department.

SUMMARY: The proposed amendments to Rule 12A-19.041, F.A.C.: (1) amend the title to "Sales of Communications Services to a Residential Household" and the scope of the rule to clarify the intent of the application of the rule, as amended; (2) update provisions regarding the state portion and gross receipts tax portion of the Florida communications services tax for purposes of the residential exemption, as provided in Chapter 2010-149, L.O.F.; (3) include the definition of "transient public lodging establishment," as defined in Section 509.013, F.S., as amended by Chapter 2008-55, L.O.F.; (4) clarify that the residential exemption from communications services tax does not apply to "transient public lodging establishments," as

provided in Section 4, Chapter 2010-138, L.O.F.; and (5) update the term "service provider" to "dealer" of communications services.

The proposed amendments to Rule 12A-19.100, F.A.C. (Public Use Forms): (1) incorporate the instructions to report tax due on communications services billed on or after August 1, 2010, and provide for the components of the communications services tax collected to be shown on Form DR-700016, Florida Communications Services Tax Return, and Form DR-700019, Communications Services Use Tax Return, as provided in Chapter 2010-149, L.O.F.; (2) provide in the instructions of Form DR-700016 that the residential exemption from the communications services tax does not include any transient public lodging establishment, as clarified in section 4, Chapter 2010-138, L.O.F.; (3) provide for the reporting of bad debt credits consistent with the provisions of Chapter 2010-83, L.O.F.; (4) provide which version of Form DR-700016, Florida Communications Services Tax Return, is to be used to report communications services tax on services billed during the calendar year; (5) update the local communications services tax rates; (6) adopt, by reference, changes to Forms DR-700016 and DR-700019 necessary to incorporate the law changes and the rate local communications services tax rates; and (7) update the information on how to obtain copies of forms from the Department.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. 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: 175.1015(5), 185.085(5), 202.151, 202.16(2), 202.26(3)(a), (c), (d), (e), (j), 202.27(7) FS.

LAW IMPLEMENTED: 119.071(5), 175.1015, 185.085, 202.11(3), (10), (11), 202.12(1), (3),

202.125(1), 202.13(2), 202.151, 202.16(2), (4), 202.17(6), 202.19(1), (7), (10), 202.22(6), 202.27, 202.28(1), (2), 202.29, 202.30(3), 202.33, 202.34(3), (4)(c), 202.35(1), (2), (4) 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 the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least 48 hours before such proceeding by contacting Sarah Wachman at (850)410-2651. 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).

PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Heather Miller, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4835.

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-19, FLORIDA ADMINISTRATIVE CODE
COMMUNICATIONS SERVICES TAX
AMENDING RULES 12A-19.041 AND 12A-19.100

12A-19.041 Sales of Residential Exemption from the Communications Services to a Residential Household Tax.

~~(1)(a) The sale of communications services, as defined in Section 202.11(2), F.S., is subject to the Florida communications services tax and the local communications services tax, unless specifically exempt.~~

~~(1)(b) This rule is intended to clarify the application of tax on sales of communications services to residential households and governs the documentation and recordkeeping requirements of dealers who make sales to regarding the exemption for residential households from the communications services taxes.~~

(2) APPLICATION OF TAX THAT IS EXEMPT.

(a) Sales of communications services to a residential household are exempt from not subject to the state portion of the Florida communications services tax, imposed by Section 202.12(1)(a), F.S., and the additional gross receipts tax rate, imposed by Section 203.01(1)(b)3., F.S.

~~(b)(3) TAXES THAT ARE NOT EXEMPT.~~ Sales of communications services to a residential household remain are subject to the Florida gross receipts tax rate portion of the Florida communications services tax, imposed by Section 203.01(1)(b)(a)2., F.S., and the local

communications services tax rates, imposed by Section 202.19, F.S.

~~(c)(4) SERVICES THAT ARE NOT EXEMPT. The This partial exemption for sales to a residential household~~ does not apply to:

~~1.(a)~~ Sales of any cable service, as defined in Section 202.11(1), F.S.;

~~2.(b)~~ Sales of any direct-to-home satellite service, as defined in Section 202.11(5), F.S.;

and

~~3.(c)~~ Sales of mobile communications services, as defined in Section 202.11(7), F.S.

~~(3)(5) TRANSIENT PUBLIC LODGING ESTABLISHMENTS FACILITIES THAT ARE NOT EXEMPT. The This partial exemption for sales to residential households~~ does not apply to sales to any residence that constitutes all or part of the service address of any structure or any unit within a structure licensed as a transient public lodging establishment, as defined by Section 509.013(4)(a), F.S., ~~with the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.~~

(a) The purchaser is required to notify the communications services dealer provider when the communications services are used in a transient licensed public lodging establishment. If the purchaser fails to provide such notification, the Department will look to the purchaser, rather than the dealer provider, for any applicable tax, penalty, or interest due when the services were purchased for use in a transient public lodging establishment.

(b) Persons that are entitled to an exemption from sales tax on the purchase of electric power or energy, gas, or fuel for use in a residential household, as provided in Rules 12A-1.053 and 12A-1.059, F.A.C., are not entitled to the exemption from communications services tax when the service address constitutes all or part of that residential household is licensed as a transient public lodging establishment.

(c) A “transient public lodging establishment,” as defined in Section 509.013, F.S., means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings that is:

1. Advertised or held out to the public as a place that is regularly rented to guests; or
2. Rented more than three times in a calendar year, with each separate rental period having a duration less than 1 calendar month or less than 30 days.

(d) Transient public ~~Public~~ lodging establishments ~~include the following, if they are rented by an owner or operator~~ to guests whose occupancy is intended to be temporary.:

Examples of transient public lodging establishments include hotels,

~~1. Hotels, motels, bed and breakfast inns, transient apartments, ~~nontransient apartments,~~ transient rooming houses, and resort dwellings. ~~other transient establishments;~~~~

~~2. Any unit or group of units in a condominium, cooperative, time share plan, or other resort condominium; or~~

~~3. Any single family dwelling, duplex, triplex, quadraplex, townhouse, beach cottage, mobile home, or other resort dwelling.~~

~~(4)(6)~~ DOCUMENTATION REQUIREMENTS. A communications services dealer ~~provider~~, unless notified by the purchaser that the residential exemption does not apply, is not required to collect and remit tax on sales of communications services when:

(a) The service is sold at a rate based on a “residential schedule,” under the tariffs filed by a service provider with the Public Service Commission; or

(b) A dealer ~~service provider~~ has on file a writing or document evidencing a representation ~~of a customer~~ that the communications services are being purchased for residential household use. The writing or document may be a customer application or a certificate that

identifies the customer as purchasing the communications services for residential purposes. A “customer application” includes a record of information obtained electronically or orally from the customer in the ordinary course of business. A dealer provider must have acted in good faith in accepting the representation of a customer.

~~(5)(7)~~ No change.

Rulemaking Specific Authority 202.26(3)(c) FS. Law Implemented 202.125(1), 202.13(2), 202.16(4), 202.19(10), 202.34(3), 202.35(4) FS. History—New 1-31-02, Amended.

12A-19.100 Public Use Forms.

(1)(a) The Department employs the following public-use forms and instructions in the administration of Chapter 202, F.S., Communications Services Tax, and in the administration of the Department’s electronic Address/Jurisdiction Database created pursuant to Sections 175.1015 and 185.085, F.S. These forms are hereby incorporated by reference in this rule.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 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) The following versions of Form DR-700016, Florida Communications Services Tax Return, are applicable to the reporting periods and service billing dates indicated:

REVISION DATE	REPORTING PERIODS	SERVICE BILLING DATES
<u>01/11</u>	<u>January 2011 -</u>	<u>January 1, 2011 -</u>
<u>08/10</u>	<u>August 2010 - December 2010</u>	<u>August 1, 2010 - December 31, 2010</u>
01/10	January 2010 - <u>July 2010</u>	January 1, 2010 - <u>July 31, 2010</u>
06/09	June 2009 - December 2009	June 1, 2009 - December 31, 2009
01/09	January 2009 - May 2009	January 1, 2009 - May 31, 2009
09/08	September 2008 - December 2008	September 1, 2008 - December 31, 2008
06/08	June 2008 - August 2008	June 1, 2008 - August 31, 2008
05/08	May 2008	May 1, 2008 - May 31, 2008
01/08	January 2008 - April 2008	January 1, 2008 - April 30, 2008
09/07	September 2007 - December 2007	September 1, 2007 - December 31, 2007
06/07	June 2007- August 2007	June 1, 2007- August 31, 2007
02/07	February 2007 - May 2007	February 1, 2007 - May 31, 2007
01/07	January 2007	January 1, 2007 - January 31, 2007
06/06	June 2006 - December 2006	June 1, 2006 - December 31, 2006
01/06	January 2006 - May 2006	January 1, 2006 - May 31, 2006
11/05	November 2005 - December 2005	November 1, 2005 - December 31, 2005
06/05	June 2005 - October 2005	June 1, 2005- October 31, 2005
01/05	January 2005 - May 2005	January 1, 2005 - May 31, 2005
11/04	November 2004 - December 2004	November 1, 2004 - December 31, 2004
10/04	October 2004	October 1, 2004 - October 31, 2004
06/04	June 2004 - September 2004	June 1, 2004 - September 30, 2004

01/04	January 2004 - May 2004	January 1, 2004 - May 31, 2004
12/03	December 2003	December 1, 2003 - December 31, 2003
11/03	November 2003	November 1, 2003 - November 30, 2003
10/03	October 2003	October 1, 2003 - October 31, 2003
06/03	June 2003 - September 2003	June 1, 2003 - September 30, 2003
03/03	March 2003 - May 2003	March 1, 2003 - May 31, 2003
01/03	January 2003 - February 2003	January 1, 2003 - February 28, 2003
12/02	December 2002	December 1, 2002 - December 31, 2002
11/02	November 2002	November 1, 2002 - November 30, 2002
10/02	October 2002	October 1, 2002 - October 31, 2002
01/02	January 2002 - September 2002	January 1, 2002 - September 30, 2002
12/01	October 2001 - December 2001	October 1, 2001 - December 31, 2001

Form Number	Title	Effective Date
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(3) No change.

(4)(a) DR-700016 Florida Communications Services Tax Return

(R. 01/11)

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(b) DR-700016 Florida Communications Services Tax Return

(R. 08/10)

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(a) through (ee) renumbered (c) through (gg) No change.

(5) DR-700019 Communications Services Use Tax Return

(R. 8/10 ~~10/09~~)

— ~~06/10~~

(6) through (12) No change.

Rulemaking Authority 175.1015(5), 185.085(5), 202.151, 202.16(2), 202.26(3)(a), (c), (d), (e), (j), 202.27(7) FS. Law Implemented 119.071(5), 175.1015, 185.085, 202.11(3), (10), (11), 202.12(1), (3), 202.13(2), 202.151, 202.16(2), (4), 202.17(6), 202.19(1), (7), 202.22(6), 202.27, 202.28(1), (2), 202.29, 202.30(3), 202.33, 202.34(3), (4)(c), 202.35(1), (2) FS. History—New 4-17-03, Amended 7-31-03, 10-1-03, 9-28-04, 6-28-05, 11-14-05, 7-16-06, 4-5-07, 11-6-07, 12-20-07, 1-28-08, 1-27-09, 1-11-10, 6-28-10(3), 6-28-10(5),_____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Heather Miller, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4835.

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 August 13, 2010 (Vol. 36, No. 32, pp. 3684-3685). No request was received by the Department to hold a workshop. No written comments have been received by the Department.

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

AMENDING RULES 12A-1.005, 12A-1.009, 12A-1.0091, 12A-1.0092, 12A-1.011,
12A-1.0161, 12A-1.044, AND 12A-1.096

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12A-1.005, F.A.C. (Admissions), include the reinstatement of the exemption for admission charges to an event held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility when sponsored by a governmental entity, sports authority, or sports commission, and the expansion of the exemption for admissions to certain professional sporting events, as provided in Section 212.04(2)(a)2. and 4., F.S., as amended by Section 6, Chapter 2010-147, L.O.F.

The proposed amendments to Rule 12A-1.009, F.A.C. (amended title "Receipts from Services for Exterminating and Pest Control"), Rule 12A-1.0091, F.A.C. (Cleaning Services), and Rule 12A-1.0092, F.A.C. (Detective, Burglar Protection, and Other Protection Services), include the NAICS Codes and update the illustrative examples of services included under the specified NAICS National Codes designated in section 212.05(1)(i), F.S.

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), add

provisions for the taxability of packages of both exempt food products and taxable tangible personal property, as provided in Section 7, Chapter 2010-138, L.O.F., which were previously provided in this rule prior to the substantial rewording effective November 3, 2009.

The proposed amendments to Rule 12A-1.0161, F.A.C. (Sales and Use Tax on Services; Sales for Resale), remove obsolete provisions which applied to the taxability of services before September 1, 1992.

The proposed amendments to Rule 12A-1.044, F.A.C. (Vending Machines), update the notice to customers that must be affixed to a vending machine by the operator of the machine, as provided in Section 212.0515(3), as amend by Section 6, Chapter 2010-138, L.O.F.

The proposed amendments to Rule 12A-1.096, F.A.C. (Industrial Machinery and Equipment for Use in a New or Expanding Business), include the amendments to section 212.08(5)(b)6.b., F.S., provided in Section 9, Chapter 2010-147, L.O.F. This law change: (1) provides that productive output may be measured by the output for 12 continuous months selected by an expanding business following the completion of the installation of qualified machinery and equipment; (2) continues to provide that the measurement period must begin within 24 months of the installation of the equipment; and (3) strikes the requirement to obtain approval of the alternative measurement period from the Department.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

Section 6, Chapter 2010-147, L.O.F., reinstates the exemption Section 212.04(2)(a)2., F.S., for admission charges to an event held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility when sponsored by a governmental entity, sports authority, or sports commission,

expands the exemption provided in Section 212.04(2)(a)4., F.S., for admissions to certain professional sporting events.

Section 3, 2009-51, L.O.F., and Section 5, Chapter 2010-138, L.O.F., amended Section 212.05(1)(j), F.S., to replace the Standard Industry Codes for detective, burglar protection, and other protection services and for nonresidential cleaning and nonresidential building pest control services with North American Industry Classification System National Industry Codes (NAICS Codes).

Section 9, Chapter 2010-147, L.O.F., amends Section 212.08(5)(b)6.b., F.S., to provide that productive output may be measured by the output for 12 continuous months selected by an expanding business following the completion of the installation of qualified machinery and equipment, and to strike the requirement to obtain approval of the alternative measurement period from the Department.

The proposed rule amendments to Chapter 12A-1, F.A.C., are necessary to: (1) include the reinstated exemption for admissions to events sponsored by a governmental entity, sports authority, or sports commission at publicly owned facilities and the expansion of the exemption to certain professional sporting events provided in Section 212.04(2)(a)2. and 4., F.S., as amended by Section 6, Chapter 2010-147, L.O.F.; (2) replace the Standard Industry Codes for detective, burglar protection, and other protection services and for nonresidential cleaning and nonresidential building pest control services with North American Industry Classification System National Industry Codes (NAICS Codes) as provided in Section 3, Chapter 2009-51, L.O.F., and Section 5, Chapter 2010-138, L.O.F.; (3) include the taxability of packages of both exempt food products and taxable tangible personal property, as provided in Section 7, Chapter 2010-138, L.O.F.; (4) remove obsolete provisions regarding the taxability of services before September 1,

1992; (5) change the contents of the notice required to be placed on vending machines by operators provided in Section 212.0515(3), as amend by Section 6, Chapter 2010-138, L.O.F.; and (6) change the definition of "productive output," as revised by Section 9, Chapter 2010-147, L.O.F.

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 August 13, 2010 (Vol. 36, No. 32, pp. 3682-3683), to advise the public of the development of changes to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), and to provide that, if requested in writing, a rule development workshop would be held on August 31, 2010. No request was received by the Department. No written comments have been received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE NO: RULE TITLE:

12A-1.005 Admissions

12A-1.009 Receipts from Services Rendered for Exterminating and Pest Control

12A-1.0091 Cleaning Services

12A-1.0092 Detective, Burglar Protection, and Other Protection Services

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

12A-1.0161 Sales and Use Tax on Services; Sale for Resale

12A-1.044 Vending Machines

12A-1.096 Industrial Machinery and Equipment for Use in a New or Expanding Business

PURPOSE AND EFFECT: Section 6, Chapter 2010-147, L.O.F., reinstates the exemption Section 212.04(2)(a)2., F.S., for admission charges to an event held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility when sponsored by a governmental entity, sports authority, or sports commission, expands the exemption provided in Section 212.04(2)(a)4., F.S., for admissions to certain professional sporting events.

Section 3, 2009-51, L.O.F., and Section 5, Chapter 2010-138, L.O.F., amended Section 212.05(1)(j), F.S., to replace the Standard Industry Codes for detective, burglar protection, and other protection services and for nonresidential cleaning and nonresidential building pest control

services with North American Industry Classification System National Industry Codes (NAICS Codes).

Section 9, Chapter 2010-147, L.O.F., amends Section 212.08(5)(b)6.b., F.S., to provide that productive output may be measured by the output for 12 continuous months selected by an expanding business following the completion of the installation of qualified machinery and equipment, and to strike the requirement to obtain approval of the alternative measurement period from the Department.

The purpose of the proposed rule amendments to Chapter 12A-1, F.A.C., is to: (1) include the reinstated exemption for admissions to events sponsored by a governmental entity, sports authority, or sports commission at publicly owned facilities and the expansion of the exemption to certain professional sporting events provided in Section 212.04(2)(a)2. and 4., F.S., as amended by Section 6, Chapter 2010-147, L.O.F.; (2) replace the Standard Industry Codes for detective, burglar protection, and other protection services and for nonresidential cleaning and nonresidential building pest control services with North American Industry Classification System National Industry Codes (NAICS Codes) as provided in Section 3, Chapter 2009-51, L.O.F., and Section 5, Chapter 2010-138, L.O.F.; (3) include the taxability of packages of both exempt food products and taxable tangible personal property, as provided in Section 7, Chapter 2010-138, L.O.F.; (4) remove obsolete provisions regarding the taxability of services before September 1, 1992; (5) change the contents of the notice required to be placed on vending machines by operators provided in Section 212.0515(3), as amend by Section 6, Chapter 2010-138, L.O.F.; and (6) change the definition of "productive output," as revised by Section 9, Chapter 2010-147, L.O.F.

SUMMARY: The proposed amendments to Rule 12A-1.005, F.A.C. (Admissions), include the

reinstatement of the exemption for admission charges to an event held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility when sponsored by a governmental entity, sports authority, or sports commission, and the expansion of the exemption for admissions to certain professional sporting events, as provided in Section 212.04(2)(a)2. and 4., F.S., as amended by Section 6, Chapter 2010-147, L.O.F.

The proposed amendments to Rule 12A-1.009, F.A.C. (amended title "Receipts from Services for Exterminating and Pest Control"), Rule 12A-1.0091, F.A.C. (Cleaning Services), and Rule 12A-1.0092, F.A.C. (Detective, Burglar Protection, and Other Protection Services), include the NAICS Codes and update the illustrative examples of services included under the specified NAICS National Codes designated in section 212.05(1)(i), F.S.

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), add provisions for the taxability of packages of both exempt food products and taxable tangible personal property, as provided in Section 7, Chapter 2010-138, L.O.F., which were previously provided in this rule prior to the substantial rewording effective November 3, 2009.

The proposed amendments to Rule 12A-1.0161, F.A.C. (Sales and Use Tax on Services; Sales for Resale), remove obsolete provisions which applied to the taxability of services before September 1, 1992.

The proposed amendments to Rule 12A-1.044, F.A.C. (Vending Machines), update the notice to customers that must be affixed to a vending machine by the operator of the machine, as provided in Section 212.0515(3), as amend by Section 6, Chapter 2010-138, L.O.F.

The proposed amendments to Rule 12A-1.096, F.A.C. (Industrial Machinery and Equipment for Use in a New or Expanding Business), include the amendments to section 212.08(5)(b)6.b., F.S., provided in Section 9, Chapter 2010-147, L.O.F. This law change: (1) provides that productive output may be measured by the output for 12 continuous months selected by an expanding business following the completion of the installation of qualified machinery and equipment; (2) continues to provide that the measurement period must begin within 24 months of the installation of the equipment; and (3) strikes the requirement to obtain approval of the alternative measurement period from the Department.

RULEMAKING AUTHORITY: 212.0515, 212.08(5)(b)4., 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.02(1), (4), (10)(g), (14), (15), (16), (19), (20), (21), (22), (24), 212.031, 212.04, 212.05(1)(a)1.a., (1)(b), (1)(h), (i), 212.0515, 212.054(1), (2), (3)(l), 212.055, 212.06(1)(a), (2)(k), 212.07(1)(b), (2), 212.08(1), (4)(a)1., (5)(b), (6), (7), (8), 212.085, 212.11(1), 212.12(2), (3), (4), (9), 212.13(2), 212.18(2), (3), 213.255(2), (3), 215.26(2), 616.260 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 the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least 48 hours before such proceeding by contacting Sarah Wachman at (850)410-2651. 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).

PERSONS TO BE CONTACTED REGARDING THE PROPOSED RULES ARE: Janet Young, Tax Law Specialist, and Jeffery Soff, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407 and (850)922-4719.

THE FULL TEXT OF THE PROPOSED RULES IS:

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

AMENDING RULES 12A-1.005, 12A-1.009, 12A-1.0091, 12A-1.0092, 12A-1.011,
12A-1.0161, 12A-1.044, AND 12A-1.096

12A-1.005 Admissions.

(1) No change.

(2) EXEMPT ADMISSIONS. The following admissions are exempt from the tax imposed under Section 212.04, F.S.:

(a) through (c) No change.

(d) Admissions to the following professional or collegiate sporting events are exempt, as provided in Sections 212.04(2)(a)4. and 9., F.S.:

1. National Football League championship game or Pro Bowl;

2. ,a Major League Baseball, National Basketball Association, or National Hockey League all-star game and Major League Baseball Home Run Derby held before the Major League Baseball all-star games;

3. National Basketball Association Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, or Slam Dunk Challenge;

4. Any any semifinal or championship game of a national collegiate tournament, or any postseason collegiate football game sanctioned by the National Collegiate Athletic Association, ~~as provided in Sections 212.04(2)(a)4. and 9., F.S., are exempt.~~

(e) through (f) No change.

(g) Admission charges to an event held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility are exempt when:

1. The event is sponsored by a sports authority or commission, exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, as amended, that is contracted with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community or is sponsored by a governmental entity;

2. 100 percent of the funds at risk belong to the sponsoring entity;

3. 100 percent of the risk of success or failure lies with the sponsoring entity; and

4. The talent for the event is not derived exclusively from students or faculty.

(g) through (j) renumbered (h) through (k) No change.

(3) through (6) No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(1), 212.04, 212.08(6), (7), 616.260 FS. History—Revised 10-7-68, 1-7-70, 6-16-72, Amended 7-19-72, 12-11-74, 9-28-78, 7-3-79, 12-3-81, 7-20-82, Formerly 12A-1.05, Amended 1-2-89, 12-16-91, 10-17-94, 3-20-96, 3-4-01, 10-2-01, 4-17-03, 6-28-05, 4-26-10, _____.

12A-1.009 Receipts from Services Rendered for Exterminating and Pest Control ~~by Insect or Pest Exterminators.~~

(1)(a) Nonresidential pest control services enumerated in NAICS National Number 561710 of the North American Industry Classification System, published 2007, are subject to tax. Nonresidential pest control services are those services (not involving repair) rendered to minimize or eliminate any infestation of nonresidential buildings by vermin, insects, and other

pests that do not include services provided for tangible personal property, ~~and include such services as:~~ Illustrative examples of taxable services are:

1. Bird control or bird proofing;
2. Exterminating services;
3. Fumigating services;
4. Pest control services ~~in structures~~; and
5. Termite control.

(b) and (c) No change.

(2) through (6) No change.

(7) Pest control services provided ~~to farmers~~ for agricultural purposes or for forestry production are not taxable.

(8) Aircraft, boats, motor vehicles and other transportation vehicles are not considered to be nonresidential buildings. Therefore, the charge for pest control services provided to such vehicles is not taxable.

(9) No change.

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1)(b), (i), (j), 212.07(2) FS. History-Revised 10-7-68, 6-16-72, Formerly 12A-1.09, Amended 5-13-93, 3-20-96, 4-2-00, 6-19-01, _____.

12A-1.0091 Cleaning Services.

(1)(a) Nonresidential cleaning services as enumerated in NAICS National Number 561720 of the North American Industry Classification System, published 2007, are subject to tax. Nonresidential cleaning services are those services (not involving repair) rendered to

maintain the clean and sanitary appearance and operating condition of a nonresidential building interiors, but they do not include cleaning services provided for tangible personal property.

Illustrative examples of taxable services are: ~~Examples of such nonresidential cleaning services subject to tax are:~~

1. Acoustical tile cleaning services;
2. Building cleaning services, interior;
3. Custodial services;
- ~~3. Chimney cleaning services;~~
- ~~4. Custodians of schools on a contract or fee basis;~~
- ~~4.5. Deodorant servicing of restrooms;~~
- ~~5.6. Disinfecting services;~~
- ~~6.7. Floor waxing services;~~
- ~~7.8. Housekeeping (cleaning services) on a contract or fee basis;~~
- ~~8.9. Janitorial services on a contract or fee basis;~~
- ~~10. Lighting maintenance services (bulb replacement and cleaning);~~
- ~~9.11. Maid services on a contract or fee basis;~~
- ~~10.12. Maintenance of buildings (except repairs);~~
- ~~11.13. Office cleaning services;~~
- ~~12.14. Restroom cleaning services;~~
- ~~13.15. Service station cleaning and degreasing services;~~
- ~~14.16. Venetian blind cleaning;~~
- ~~15.17. Washroom sanitation service; and~~
- ~~16.18. Window cleaning (interior or exterior).~~

(b) No change.

(c) The cleaning of tangible personal property is subject to the provisions of Rule 12A-1.006, F.A.C.

~~(d)(e)~~ No change.

(2) No change.

(3) Aircraft, boats, motor vehicles, and other transportation vehicles are not considered to be nonresidential buildings. For the taxability of cleaning aircraft, boats, motor vehicles, and other vehicles, see Rule 12A-1.006, F.A.C.

(4) Pressure cleaning (power washing) of the exterior of a building, or of parking lots or parking structures, is not taxable as a cleaning service.

(5) No change.

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1)(b), (i), 212.07(2) FS. History-New 5-13-93, Amended 3-20-96, 7-1-99, 4-2-00, 3-4-01, 6-19-01,_____.

12A-1.0092 Detective, Burglar Protection, and Other Protection Services.

(1) Persons who provide any of the services enumerated in NAICS National Numbers 561611, 561612, 561613, and 561621 of the North American Industry Classification System, published 2007 ~~Industry Numbers 7381 and 7382 of the Standard Industrial Classification Manual, 1987~~, are dealers in a taxable service and are required to charge sales tax on the total taxable sales price of the service.

(2)(a) Detective, burglar protection, and other protection services are those services which are rendered to minimize or prevent loss or damage to life, limb, or property and are of a

kind typically performed by security or alarm system companies, or are those investigative services which are rendered to obtain evidence or other information for legal, business, employment, or personal purposes of a kind typically performed by detective or investigative agencies. Illustrative examples of These taxable services are include:

1. Armored car service;

2. Bodyguard (personal protection) services;

3.2. Burglar or fire alarm or other security system devices monitoring and maintenance;

a. The installation of alarm or security systems that remain tangible personal property is governed by the provisions of Rule 12A-1.016, F.A.C.

b. The installation of alarm or security systems that become a part of real property is governed by the provisions of Rule 12A-1.051, F.A.C.

c. The monitoring or maintenance of alarm or security systems is a taxable service whether such for systems that are considered to be either tangible personal property or a part of real property. The term maintenance includes any inspection of an alarm or security system to confirm its proper working order. The term maintenance does not include the expansion or upgrade of an existing system, but it does include the replacement of defective components.

4.3. Detective agency services;

4. Dogs, rental of for protective services;

5. Fingerprint service;

6. Guard dogs, detection dogs, and other dogs for protection or investigative services (not including training), with or without a handler;

7.6. Guard, patrol, and parking or other facility security services service;

8.7. Investigation services (except credit) Investigators, private;

~~9.8.~~ Lie detector or polygraph services;

10. Missing person tracing services;

~~11.9.~~ Passenger screening services; and

~~10. Protective service, guard; and~~

~~11. Security guard service.~~

12. Skip tracing services.

(b) The services in paragraph (a) above are taxable for all persons, businesses, residences, or nonresidential properties.

(c) The following services, when performed by detectives, private investigators, or others are not subject to tax when freestanding, or when separately stated on an invoice given to a purchaser which includes taxable services:

1. through 2. No change.

3. Insurance services as classified ~~enumerated~~ under NAICS National Industry Number 524298 6411, such as insurance ~~inspection and~~ investigation services, insurance loss prevention services, or insurance reporting services, ~~or insurance research services~~. The name of the insurance carrier must be included in the billing for the investigative services.

4. through 5. No change.

6. Repossession services. ~~Charges for repossession services do not become taxable when “locate” or “skip trace” activities must be performed by the reposessor in connection with the repossession.~~

(d) through (f) No change.

(3)(a) If a transaction involves both the sale or use of a service which is taxable and the sale or use of a service which is not taxable, the charges for the taxable portion of the transaction

must be separately stated from the charges for the nontaxable ~~non-taxable~~ portion or the entire transaction will be presumed taxable.

1. No change.

2. Example: Company A is a defense industry contractor. Company A hires an investigative firm to perform a full background check, including psychological and drug testing, on employment applicants. The investigative firm engages the services of a psychologist and a medical lab to perform the necessary testing procedures. The professional services of the psychologist and the medical lab do not fall within the taxable services enumerated in subsection (1) Industry Numbers 7381 or 7382. However, the charge that the investigative firm makes to Company A for the psychological and drug testing must be separately stated or the entire transaction will be subject to tax.

3. No change.

(b) through (f) No change.

(4) through (6) No change.

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1)(b), (i), 212.06(1)(a), (2)(k), 212.085 FS. History-New 5-13-93, Amended 10-17-94, 3-20-96, 7-29-98,_____.

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 (9) No change.

(10) MULTIPLE ITEMS PACKAGES.

(a) When a package contains both exempt food products and taxable tangible personal property (e.g., a basket of food and candy, a basket of nuts, or decorated cans or glasses filled with food items) and the tax-exempt food products are separately itemized and priced from the taxable tangible personal property, no tax is due on the tax-exempt food products.

(b) When the total charge for a package containing both exempt food products and taxable tangible personal property is a single charge, the application of tax depends upon the essential character of the complete package, as follows:

1. When the taxable tangible personal property represents more than twenty-five (25) percent of the value of the package, the total charge is subject to tax.

2. When the taxable tangible personal property represents twenty-five (25) percent or less of the value of the package, the total sale is exempt. The seller is required to pay tax on any taxable items included in the package that were purchased tax-exempt for the purposes of resale. The cost price of any promotional items included in the package is subject to tax.

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,_____.

12A-1.0161 Sales and Use Tax on Services; Sale for Resale.

(1) through (5) No change.

(6)~~(a)~~ If a transaction involves both the sale of a taxable service, as provided in subsection (1) above, and the sale of a service that is not taxable, or if it involves both the sale of a taxable service and the sale or use of property that is not subject to sales or use tax, the charges

shall be separately identified and stated with respect to the taxable and nontaxable portions of the transaction. The tax shall apply to the transaction to the extent that the consideration paid in connection with the transaction is payment for the sale of taxable services. Failure to separately state the charges shall create a presumption that the entire transaction is a taxable service. The burden shall be on the seller of the service or the purchaser of the service, whichever is applicable, to overcome this presumption by providing documentary evidence (i.e., time sheets, schedules, receipts, or other documents which support activities) as to the amount of the transaction that is exempt from tax. If the Department determines that the taxable and exempt portions of a transaction are inaccurately stated, the Department is authorized to adjust such portions with support by substantial competent evidence.

~~(b)1. If a transaction enumerated in subsection (1) above was taxable before September 1, 1992, on some other basis, it continues to be taxable on and after that date on that other basis, and is not taxable as a service enumerated in subsection (1) above.~~

~~2. Example: Rental of dogs for protective services was taxable before September 1, 1992, as rental of tangible personal property. On and after that date it continues to be taxable as the rental of tangible personal property.~~

(7) through (8) No change.

Rulemaking Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1)(b), (i), 212.06(1)(a), (2)(k), 212.07(1)(b), 212.08(7)(v) FS. History-New 5-13-93, Amended 1-4-94, 10-17-94, 3-20-96, 4-2-00, 10-2-01, 4-17-03,_____.

12A-1.044 Vending Machines.

(1) through (3) No change.

(4) Notice to be displayed on each vending machine; penalty and interest for failing to display notice.

(a) Before an operator may operate a food or beverage vending machine in this state, the operator must post ~~affix~~ a notice on each vending machine. Token machines are not considered to be vending machines which require a notice.

~~(b) The notice must state the operator's name, address, and Federal Employer Identification (FEI) number, or if the federal government does not require the operator to have an FEI number, the Sales Tax Registration number is required.~~

~~(b)(c) You may use the example provided below or have your own notice printed. The However, if printed, the notice must contain the exact wording of the following statements in as in the examples, type that is must not be smaller than 14 point bold face, and the words "cash reward" must not be smaller than 30 point:-~~

NOTICE TO CUSTOMER:

FLORIDA LAW REQUIRES THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING MACHINES. Report any machine without a notice to 1-800-352-9273. You may be eligible for a CASH REWARD.

DO NOT USE THIS NUMBER TO REPORT PROBLEMS WITH THE VENDING MACHINE SUCH AS LOST MONEY OR OUT-OF-DATE PRODUCTS.

FOR FOOD OR BEVERAGE VENDING MACHINES

Name of Operator

Address

City State Zip Code

FBI or ST#

Notice of Customers:

~~Florida Law requires this Notice to be posted on all food and beverage vending machines.~~

~~Report any machine without a notice to 1-800-FL-AWARD. You may be eligible for a CASH REWARD.~~

~~(c)(d)~~ The notice must be displayed on the upper front of a vending machine, unless such placement impairs the use of the machine. If the notice cannot be placed on the upper front of the vending machine, then the notice must be displayed on another place on the machine where it is easily readable by the public. The notice must be affixed to the machine so it is not easily removed.

~~(d)(e)~~ Any vending machine operator who fails to properly obtain and display the required notice on any vending machine is subject to the penalties and interest as provided in Section 212.0515(4), F.S.

(5) through (8) No change.

Rulemaking Specific Authority 212.0515, 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(10)(g), (14), (15), (16), (19), (24), 212.031, 212.05(1)(h), 212.0515, 212.054(1), (2), (3)(l), 212.055, 212.07(1), (2), 212.08(1), (7), (8), 212.11(1), 212.12(2), (3), (4), (9), 212.18(2), (3) FS. History—Revised 10-7-68, 6-16-72, 1-10-78, Amended 7-20-82, Formerly 12A-1.44,

Amended 12-13-88, 5-11-92, 3-17-93, 9-14-93, 12-13-94, 3-20-96, 7-1-99, 6-19-01, 11-1-05,_____.

12A-1.096 Industrial Machinery and Equipment for Use in a New or Expanding Business.

(1) Definitions – The following terms and phrases when used in this rule have the meaning ascribed to them except where the context clearly indicates a different meaning:

(a) through (f) No change.

(g) “Productive output” ordinarily means the number of units actually produced by a single plant or operation in a single continuous 12-month period. The increase in productive output ~~shall be~~ is measured by the output for 12 continuous months, as selected by the expanding business, immediately following the completion of the installation of machinery and equipment for the expansion project as compared to the productive output of 12 continuous months immediately preceding the beginning of the installation of machinery and equipment for the expansion project. However, the 12 continuous months post installation measurement period, as selected by the expanding business, if a different 12 month continuous period would more accurately reflect the increase in productive output as a result of a business expansion, the increase in productive output will be measured during that alternate 12 month continuous period provided that prior to the start of production by the expanded business the Executive Director or the Executive Director’s designee agrees to such alternate measuring period. Such alternate continuous 12 month measuring period approved by the Executive Director or the Executive Director’s designee must begin within 24 months following the completion of installation of qualifying machinery and equipment. If an alternate 12 month measuring period is requested by

~~the business entity and is agreed to by the Executive Director or the Executive Director's designee, only the selected alternate 12-month period will be used to measure the increased productive output for the business expansion, even though some 12-month period other than the selected and approved 12-month period may show a production increase of 10 percent or more as a result of the expansion project. Productive output may not be measured by sales dollars or by production labor hours for the purposes of this exemption.~~

(h) through (j) No change.

(2) through (9) No change.

Rulemaking Specific Authority 212.08(5)(b)4., 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4), (10)(g), (14), (19), (21), (22), 212.05, 212.06, 212.08(5)(b), (7)(xx), 212.13(2), 213.255(2), (3), 215.26(2) FS. History-New 5-11-92, Amended 7-1-99, 6-28-00, 6-19-01, 3-6-02, 4-1-08,_____.

NAME OF PERSONS ORIGINATING PROPOSED RULES: Janet Young, Tax Law Specialist, and Jeffery Soff, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407 and (850)922-4719.

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 August 13, 2010 (Vol. 36, No. 32, pp. 3682-3683). No request was received by the Department to hold a workshop. No written comments have been received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULE 12A-1.094

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12A-1.094, F.A.C. (Public Works Contracts), incorporate the provisions of Section 212.08(6), F.S., as amended by Section 8, Chapter 2010-138, L.O.F., to provide that a governmental entity, excluding any agency or branch of the United States, is required to issue a Certificate of Entitlement, with the entity's purchase order attached, to each vendor and to each contractor to affirm that: (1) the tangible personal property purchased from the vendor will go into and become a part of a public works; and (2) the governmental entity will be liable for any tax, penalty, and interest determined to be due if the Department determines that the tangible personal property purchased does not qualify for exemption.

The proposed amendments also provide: (1) that the governmental entity is prohibited from transferring the liability for tax, penalty, and interest to another party by contract or agreement; (2) that contracts with agencies or branches of the federal government, which are not required to issue a Certificate of Entitlement, must meet the criteria established in paragraph (4)(b) of the rule for the purchase of the tangible personal property for the public works to be tax-exempt; and (3) contractors who manufacture or fabricate tangible personal property must pay tax on the articles produced and may not accept a Certificate of Entitlement for these articles.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Effective January 2, 2011, Section 8, Chapter 2010-138, L.O.F., requires governmental entities to issue a Certificate of Entitlement to purchase tangible personal property tax-exempt for a public works project to each vendor and each contractor certifying: (1) that the tangible personal property purchased will become part of a public facility; and (2) that the governmental entity will be liable for any tax, penalty, or interest due should the Department later determine that the items purchased do not qualify for exemption under Section 212.08(6), F.S. The law excludes a federal governmental entity from these requirements.

The proposed amendments to Rule 12A-1.094, F.A.C., are necessary to: (1) maintain, without change, the current criteria governing whether a governmental entity is the purchaser of tangible personal property that qualifies for exemption under Section 212.08(6), F.S.; (2) provide the requirements and format of the Certificate of Entitlement required by Section 8, Chapter 2010-138, L.O.F., effective January 2, 2011; and (3) provide that the governmental entity is prohibited from transferring the liability for tax, penalty, and interest to another party by contract or agreement. When in effect, the rule will provide for the taxability of transactions in which contractors and subcontractors purchase tangible personal property for use in public works contracts.

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 AUGUST 25, 2010

The proposed amendments to Rule 12A-1.094, F.A.C. (Public Works Contracts), were noticed for a rule development workshop in the Florida Administrative Weekly on July 30, 2010 (Vol. 36, No. 30, pp. 3462-3463). A rule development workshop was held on August 25, 2010, in Room 118, Carlton Building, 501 S. Calhoun Street, 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

PATRICK LOEBIG, Taxpayer Rights Advocate,
Workshop Moderator
MARK ZYCH, Director, Technical Assistance and Dispute
Resolution
FRENCH BROWN, Deputy Director, Technical Assistance
and Dispute Resolution
GARY GRAY, Revenue Program Administrator, Technical
Assistance and Dispute Resolution

For the Public

SALLIE DIXON, Facilities Design and Construction,
Florida State University
LISA DURHAM, Facilities Design and Construction,
Florida State University
JIM ERVIN, Holland & Knight
WILLIAM PARKER, Associated General Contractors
WARREN H. HUSBAND, Metz, Husband & Daughton,
P.A., representing Associated General Contractors
DAN DAY HOFF, Florida State University
NANNETTE WATTS, ESG Operations, Inc.,
Wakulla County
CHRISTINE LAMIA, Bryant, Miller, and Olive, P.A.,
representing Toho Water Authority

WEBEX Participants

AMY WOOD
JIM CLAWSON
JOANNE FLICK
CHARLENE NEEL
AMOS ROUNDTREE
BECKY NORRIS

THOMAS HUGER
MARGARITA COSTAS
HANK ROWAN
MARILYN PORTER
CARRIE WOODDELL
JANET SHEEHAN
MARIE THEVENIN-FRAY
VALERIE MAGGI
TODD THORNTON
WENDY WOODHOUSE
CHRISTINE REWIS
VINCE ALDRIDGE
NICOLE NATE
LINDA SNYDER
PAUL NOBLES
NICOLE CAREY
PATSY EVANS
JOSE CARDONA
CHARLOTTE JOHNSON
SUSAN OLSEN
STEPHEN KAPLAN
DOUGLAS HUTCHENS
RICHARD ATAMAN
REGINA FOSS
BRENDA WILLIAMS
RON ZIMMERLY
ELAINE SMITH
RON LAFACE
LINDA LUCANTE
TERRI MARSHALL
LAURETTE BURKS
ANDREW COLB
CATHERINE SCHOCKWEILER
DIANNA WHITE
AVIS MCGILL
CHERYL ATKINS
ROBYN HOLDER
HENRY NOLES
BARBARA MOQUIN
BILL SOUTHERN

WRITTEN COMMENTS

JIM ERVIN, Holland & Knight
PEGGY WOOD, Caldwell, Pacetti, Edwards, Schoech &
Viator, LLP
WARREN H. HUSBAND, Metz, Husband & Daughton,
P.A., representing Associated General Contractors

NATURE OF COMMENTS RECEIVED ON PROPOSED CHANGES TO RULE 12A-1.094, F.A.C., PUBLIC WORKS CONTRACTS:

Mr. Jim Ervin, Holland & Knight, questioned why there is an exclusion from being included in a governmental entity's direct purchase program by contractors who manufacture or fabricate their own materials for incorporation into public works. He also questioned whether a contractor who holds a Certificate of Entitlement would be held liable for the tax on the materials purchased.

Mr. Ervin continued that contractors have governmental entities telling them how to prepare their contracts so that no tax is due. The contractor complies either from lack of knowledge or because they have no choice in the bidding process. Two or three years later, the Department audits the contractor and they have to pay the tax. This new provision is trying to say that if the governmental entity believes that no tax is due, and you represent to the contractor that no tax is due, the governmental entity will accept responsibility for the tax.

Mr. Mark Zych, Department of Revenue, responded that the substance of the transaction is that they are buying and installing their own materials for incorporation into the public works. Section 212.08(6), F.S., specifically directs the Department to look at the substance of the issue. The purchase is not a purchase made directly by the governmental entity.

Mr. French Brown, Department of Revenue, continued that the new Certificate of Entitlement does not change the current provisions of Rule 12A-1.094, F.A.C. If a contractor purchases the materials, they remain taxable. The governmental entity must purchase the materials to be entitled to the exemption.

Mr. Ervin asked the Department to review the law and determine if contractors who fabricate items for use in public works contracts should be included in the provisions allowing the contractor who holds a Certificate of Entitlement to be held harmless from tax due on such

fabricated items.

Continuing this discussion, Mr. Ervin submitted written comments, dated September 1, 2010, regarding a contractor making sales to a governmental entity. The proposed rule amendment is confusing. Proposed paragraph (4)(d) implies that if a contractor has a Certificate of Entitlement, sales to the contractor would not be subject to tax. Proposed subsection (5) implies that a contractor who does not manufacture or fabricate materials could accept a Certificate of Entitlement. If it is the Department's position that a contractor could never accept a Certificate, this should be made clear in the rule.

Mr. Ervin continued that the Department's position that a contractor that furnishes and installs could never accept a Certificate of Entitlement is contrary to the intent underlying section 8, Chapter 2010-138, L.O.F. By taking this position, the Department is saying that only material vendors are eligible to accept a Certificate of Entitlement and receive protection from sales and use tax liability. By limiting the Certificate of Entitlement to material vendors, the Department is essentially treating the 2010 legislation as doing nothing more than leaving prior law intact. This presumption by the Department runs directly contrary to fundamental notions of statutory construction. The proposed rule should be revised to allow the process to apply to all persons who sell materials to governmental entities, including contractors who sell and install materials under separate purchase agreements with the governmental entity. This will not eliminate the application of tax when it is due. Rather it will make sure that such liability is borne by the party ultimately responsible for that expense - the consumer of the real property improvement.

Mr. Ervin also submitted that the Department should clarify by rule its position regarding the application of sales and use tax regarding public works projects. If it is the Department's position that a contractor can never make exempt sales of materials to governmental entities, this

should be expressly stated in the rule. In addition, clarification and taxpayer education are needed in this area.

Mr. Warren Husband, Metz, Husband & Daughton, P.A., submitted written comments, dated September 1, 2010, on behalf of Associated General Contractors. Mr. Husband provides that the result of proposed subsection (5) could be that any contractor that manufactures or fabricates any item may not accept a Certificate of Entitlement regarding any other building materials on a public works project. It is suggested that this provision be modified to limit the scope of this proposed provision.

Proposed Changes to Subsection (5)

Section 8, Chapter 2010-138, L.O.F., amended section 212.08(6), F.S., to add the requirement that governmental entities claiming the existing exemption for public works contracts issue a Certificate of Entitlement to the dealer selling materials and the contractor installing the materials. Substantive provisions regarding for determining whether a transaction is properly characterized as an exempt sale to a governmental entity or a taxable sale to a contractor were not amended by the law.

Section 212.08(6)(b), F.S., provides that the exemption does not apply to sales of tangible personal property made to contractors as agents of any governmental entity when the property goes into or becomes a part of a public works. Current Rule 12A-1.094(2), F.A.C., provides, in part:

(2) The purchase or manufacture of supplies or materials by a public works contractor, when such supplies or materials are purchased for the purpose of going into or becoming part of public works, whether the purchase or manufacture occurs inside or outside Florida, is taxable to the public works contractor if the public works contractor also installs such supplies or materials, since the public works contractor is the ultimate consumer of such supplies or materials. Public works contractors that purchase or manufacture such supplies and materials in Florida are liable for sales tax or use tax on such purchases and manufacturing costs.... (e.s.)

The proposed Rule does not alter the substance of the statute or current Rule. The proposed rule only adds the requirements of the Certificate of Entitlement provided by Section 8, Chapter 2010-138, L.O.F.

Section 212.08(6), F.S., requires the Department to base the determination of whether a particular transaction is properly characterized as an exempt sale to a governmental entity on the substance of the transaction rather than the form in which the transaction is cast. A contractor who furnishes and installs tangible personal property is the consumer of the tangible

personal property it uses to perform real property contracts. In such cases, the substance of the transaction cannot be characterized as a direct purchase of tangible personal property by the governmental entity. Current Rule 12A-1.094(5), F.A.C., provides that contractors who manufacture materials for incorporation into public works are liable for the tax.

The proposed changes to subsection (5) will be revised to clarify that contractor and subcontractors, not the governmental entity, are deemed to be the ultimate consumers of the articles of tangible personal property they manufacture, fabricate, or furnish to incorporate into public works and may not accept a Certificate of Entitlement for those articles.

Mr. William Parker, Associated General Contractors, requested clarification regarding risk of loss provisions when a contractor is liable for the deductibles required for builders risk insurance. The Association received a letter of technical advice in 2007 which indicated that if the contractor is responsible for paying any deductibles, the governmental entity has not assumed that portion of the risk of loss. Subsequent technical assistance advisements issued by the Department do not seem to address that question. Mr. Parker requested clarification regarding the builders' risk insurance and the transfer of the liability to the contractor.

Mr. Warren Husband, submitted written comments, dated September 1, 2010, on behalf of the Associated General Contractors. The proposed rule seems to require the governmental entity to assume the risk of loss at the time of purchase, even though it might not take title to the building materials until delivery to the site. The Department's requirement that the governmental entity be responsible for the risk of loss until the item is installed might suggest that the contractor assumes liability after the item is installed and made a part of the public work. Coverage under a standard Builder's Risk policy would cover the building materials until substantial completion or beneficial occupancy of the public work – it would not end when the item is installed. Mr. Husband suggests that the rule be modified to resolve this potential source of confusion that might otherwise lead to duplicative insurance or give rise to coverage disputes.

These comments regarding builders risk insurance is an issue that is not a part of the scope of this rulemaking. This rulemaking is limited to including the provisions of Section 8, Chapter 2010-138, L.O.F. The Department will review the letter of technical advice issued in 2007 and address this issue directly with the Mr. Husband, Mr. Parker, and Associated General Contractors.

Ms. Christine Rewis asked whether the Certificate of Entitlement to the selling dealer and the contractor need to be originals. The Department responded that a copy would be sufficient.

Changes to Proposed Subparagraph (4)(c)1.

In response, provisions were added to proposed subparagraph (4)(c)1. to provide that a governmental entity must issue a separate Certificate of Entitlement for each purchase order and that copies of the Certificate may be issued.

Ms. Lisa Durham, Florida State University, questioned the intent of proposed paragraph (4)(d). Sales to contractors are currently subject to tax. The intent of the change to this paragraph is not clear. Sales to a contractor are subject to tax whether the contractor has a Certificate of Entitlement or not. Ms. Christine Lamia, Bryant, Miller, & Olive, P.A., representing Toho Water Authority in Kissimmee, and Ms. Marilyn Porter, Ormond Beach, agreed with this comment.

Changes to Proposed Paragraph (4)(d)

In response, the proposed changes to paragraph (4)(d) were revised to provide that sales to the contractor are subject to tax.

Ms. Christine Lamia asked how long the Certificate of Entitlement should be retained. Mr. French Brown, Department of Revenue, responded that the statute of limitations for recordkeeping is provided in Section 95.091, F.S., and is generally three years. Ms. Lamia also requested a definition of “time of purchase” for purposes of shifting liability. Mr. Zych responded that it is generally at the moment title or possession is transferred; however, the Department will look further at this issue.

Proposed Certificate of Entitlement

In response, the proposed Certificate of Entitlement was revised to clarify the requirement that the governmental entity assume the risk of damage or loss at the time of purchase or delivery by the vendor.

Mr. Jose Cardona, Miami-Dade County, asked whether a Certificate of Entitlement is needed for every purchase order. French Brown responded that the Department would look into clarifying this issue.

Proposed Subparagraph (4)(c)1.

In response, provisions have been added to proposed subparagraph (4)(c)1. to clarify that a governmental entity must issue a Certificate of Entitlement for each purchase and may issue copies of the Certificate.

Mr. Ron LaFace, Capital City Consulting, requested that the Department change the provision in the Certificate of Entitlement which reads “I understand ...” to read “This Governmental Entity understands ...” or “This Governmental Entity affirms....” Ms. Marilyn Porter also expressed her concern with employees of a governmental entity personally endorsing the liability statement instead of endorsing a statement for which the governmental entity accepts liability.

Ms. Peggy Wood, Caldwell, Pacetti, Edwards, Schoech & Viator, LLP, submitted written comments, dated August 31, 2010, suggesting revisions to the proposed Certificate of Entitlement. Ms. Wood stated that there is no authority in section 212.08(6), F.S., for an individual to be held liable for payment of sales tax or to be subject to penalties of perjury if the Certificate is fraudulently issued. In addition, changes were suggested to use the term “tangible personal property” instead of “materials,” and to add that the governmental entity assumes risk of damage or loss at the time of purchase or at delivery to the site. Ms. Wood also suggested several grammatical preferences.

Changes to the Proposed Certificate of Entitlement

In response, changes were made to provide that the governmental entity:

- *affirms that the tangible personal property purchased will become a part of a public facility as a part of a public works contract;*
- *affirms that the purchase meets the exemption requirements of Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.; and*
- *assumes the risk of damage or loss at the time of purchase or delivery by the vendor.*

Additional changes were made to revise the term “materials and supplies” to “tangible personal property.”

Section 212.085, F.S., provides that when any person fraudulently, for purposes of evading the payment of tax, issues a written certificate or statement to a vendor claiming a tax exemption, that person is liable for payment of the tax, plus a mandatory penalty of 200% of the tax, and may be subject to conviction of a felony of the third degree. Section 213.37, F.S., authorizes the Department to require verification of exemption certificates. The verification must be accomplished as provided in Section 92.525(1)(b), F.S. Section 92.525(1)(b), F.S., provides that verification of the exemption certificate be signed by the person making the declaration and that the following statement be included in the document: “Under the penalties of perjury, I declare that I have read the foregoing [document] and that the facts state in it are true.” Based on these statutory provisions, no changes were made to remove these provisions from the proposed Certificate of Entitlement.

Ms. Joanne Flick, City of Daytona Beach, received confirmation that a purchase order and a Certificate of Entitlement are to be issued to the supplier of the materials purchased by the City.

Ms. Nicole Nate, Zimmet, Unice and Salzman, asked how the proposed rule would affect public works in progress when the law goes into effect. Mr. Zych responded that only those purchases made on or after January 2, 2011, would be affected by the provisions of the proposed rule.

Ms. Nannette Watts, ESG Operations, Inc., requested clarification whether the Certificate of Entitlement is to be used for every purchase by the governmental entity. Mr. Zych responded that the new certificate was to be used only when hiring a contractor to build a public work.

Mr. Jose Cardona asked whether labor costs and warranty costs could be considered for the exemption. Mr. Brown responded that labor costs and warranty costs for tax-exempt tangible personal property were also tax-exempt.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE NO: RULE TITLE:

12A-1.094 Public Works Contracts

PURPOSE AND EFFECT: Rule 12A-1.094, F.A.C. (Public Works Contracts), and Section 212.08(6), F.S., govern the taxability of transactions in which contractors and subcontractors purchase tangible personal property for use in public works contracts. Public works contracts are projects for public use or enjoyment, financed and owned by the government, in which private persons install tangible personal property that becomes a part of a public facility. The exemption in Section 212.08(6), F.S., is a general exemption for sales made directly to the government. Rule 12A-1.094, F.A.C., establishes the criteria that govern whether a governmental entity, rather than the public works contractor, is the purchaser of the materials.

Effective January 2, 2011, Section 8, Chapter 2010-138, L.O.F., requires governmental entities to issue a Certificate of Entitlement to purchase tangible personal property tax-exempt for a public works project to each vendor and each contractor certifying: (1) that the tangible personal property purchased will become part of a public facility; and (2) that the governmental entity will be liable for any tax, penalty, or interest due should the Department later determine that the items purchased do not qualify for exemption under Section 212.08(6), F.S. The law excludes a federal governmental entity from these requirements.

The purpose of the proposed amendments to Rule 12A-1.094, F.A.C., is to: (1) maintain, without change, the current criteria governing whether a governmental entity is the purchaser of tangible personal property that qualifies for exemption under Section 212.08(6), F.S.; (2) provide

the requirements and format of the Certificate of Entitlement required by Section 8, Chapter 2010-138, L.O.F., effective January 2, 2011; and (3) provide that the governmental entity is prohibited from transferring the liability for tax, penalty, and interest to another party by contract or agreement. When in effect, the rule will provide for the taxability of transactions in which contractors and subcontractors purchase tangible personal property for use in public works contracts.

SUMMARY: The proposed amendments to Rule 12A-1.094, F.A.C. (Public Works Contracts), incorporate the provisions of Section 212.08(6), F.S., as amended by Section 8, Chapter 2010-138, L.O.F., to provide that a governmental entity, excluding any agency or branch of the United States, is required to issue a Certificate of Entitlement, with the entity's purchase order attached, to each vendor and to each contractor to affirm that: (1) the tangible personal property purchased from the vendor will go into and become a part of a public works; and (2) the governmental entity will be liable for any tax, penalty, and interest determined to be due if the Department determines that the tangible personal property purchased does not qualify for exemption.

The proposed amendments also provide: (1) that the governmental entity is prohibited from transferring the liability for tax, penalty, and interest to another party by contract or agreement; (2) that contracts with agencies or branches of the federal government, which are not required to issue a Certificate of Entitlement, must meet the criteria established in paragraph (4)(b) of the rule for the purchase of the tangible personal property for the public works to be tax-exempt; and (3) contractors who manufacture or fabricate tangible personal property must pay tax on the articles produced and may not accept a Certificate of Entitlement for these articles.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A statement of

estimated regulatory costs has not been prepared by the agency. Any person who wishes to provide information regarding the statement of estimated 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: 212.08(6), 212.17(6), 212.18(2), 212.183, 213.06(1) FS.

LAW IMPLEMENTED: 92.525(1), 212.02(4), (14), (15), (16), (19), (20), (21), 212.06(1), (2), (14), 212.07(1), 212.08(6), (7)(bbb), 212.085, 212.18(2), 212.183, 213.37 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.] The public can also participate in this hearing through a simultaneous electronic broadcast of this event by the Department of Revenue using WebEx, and conference calling technology. The requirements to participate are access to the Internet and a telephone. The public can participate in this electronic workshop by accessing the broadcast from their home or office. Specific information about how to participate in this electronic meeting from your home or office will be included in the Agenda for this workshop posted on the Department's Proposed Rule site at www.myflorida.com/dor/rules.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least 48 hours before such proceeding by contacting Sarah Wachman at (850)410-2651. 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: Gary Gray,

Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4729.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULE 12A-1.094

12A-1.094 Public Works Contracts.

(1) through (3) No change.

(4)(a) through (b) No change.

(c)1. To be entitled to purchase materials tax exempt for a public works project, a governmental entity is required to issue a Certificate of Entitlement to each vendor and to the governmental entity's contractor to affirm that the tangible personal property purchased from that vendor will go into or become a part of a public work. This requirement does not apply to any agency or branch of the United States government.

2. The governmental entity's purchase order for tangible personal property to be incorporated into the public works project must be attached to the Certificate of Entitlement. The governmental entity must issue a separate Certificate of Entitlement for each purchase order. Copies of the Certificate may be issued.

3. The governmental entity will also affirm that if the Department determines that tangible personal property sold by a vendor tax-exempt pursuant to a Certificate of Entitlement does not qualify for the exemption under Section 212.08(6), F.S., and this rule, the governmental entity will be liable for any tax, penalty, and interest determined to be due.

4. The following is the format of the Certificate of Entitlement to be issued by the

governmental entity:

CERTIFICATE OF ENTITLEMENT

The undersigned authorized representative of _____ (hereinafter "Governmental Entity"), Florida Consumer's Certificate of Exemption Number _____, affirms that the tangible personal property purchased on or after _____ (date) will be incorporated into or become a part of a public facility as part of a public works contract pursuant to contract # _____ with _____ (Name of Contractor) for the construction of _____.

Governmental Entity affirms that the purchase of the tangible personal property contained in the attached Purchase Order meets the following exemption requirements contained in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.:

You must initial each of the following requirements.

_____ 1. The attached Purchase Order is issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works.

_____ 2. The vendor's invoice will be issued directly to Governmental Entity.

_____ 3. Payment of the vendor's invoice will be made directly by Governmental Entity to the vendor from public funds.

_____ 4. Governmental Entity will take title to the tangible personal property from the vendor at the time of purchase or of delivery by the vendor.

_____ 5. Governmental Entity assumes the risk of damage or loss at the time of purchase or delivery by the vendor.

Governmental Entity affirms that if the tangible personal property identified in the attached Purchase Order does not qualify for the exemption provided in Section 212.08(6), F.S.,

and Rule 12A-1.094, F.A.C., Governmental Entity will be subject to the tax, interest, and penalties due on the tangible personal property purchased. If the Florida Department of Revenue determines that the tangible personal property purchased tax-exempt by issuing this Certificate does not qualify for the exemption, Governmental Entity will be liable for any tax, penalty, and interest determined to be due.

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

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

_____	_____
<u>Signature of Authorized Representative</u>	<u>Title</u>
_____	_____
<u>Purchaser's Name (Print or Type)</u>	<u>Date</u>

Federal Employer Identification Number: _____

Telephone Number: _____

You must attach a copy of the Purchase Order to this Certificate of Entitlement.

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

~~(d)(e) Sales are taxable sales to the contractor are subject to tax unless it can be demonstrated to the satisfaction of the Executive Director or the Executive Director's designee in the responsible program that such sales are, in substance, tax exempt direct sales to the government.~~

(e) The governmental entity may not transfer liability for such tax, penalty, and interest to another party by contract or agreement.

(f) In the case of contracts with any agency or branch of the United States government in which the federal governmental agency or branch is not required to produce a Certificate of Entitlement, the purchase must comply with the five criteria provided in paragraph (b), for the purchase of tangible personal property to be exempt from sales and use tax. If the criteria in paragraph (b) are not met, the contractor is the ultimate consumer of such tangible personal property and is liable for sales or use tax on such purchases and manufacturing costs.

(5) Contractors, including subcontractors, that manufacture, fabricate, or furnish tangible personal property that the contractor incorporates ~~materials for incorporation~~ into public works are ~~shall be~~ liable for tax in the manner provided in subsection (10) of Rule 12A-1.051, F.A.C. The contractor and subcontractors, not the governmental entity, are deemed to be the ultimate consumers of the articles of tangible personal property they manufacture, fabricate, or furnish to perform their contracts and may not accept a Certificate of Entitlement for these articles.

(6) through (8) No change.

Rulemaking Specific Authority 212.08(6), 212.17(6), 212.18(2), 212.183, 213.06(1), ~~221.08(6)~~, FS. Law Implemented ~~92.525(1)~~, 212.02(4), (14), (15), (16), (19), (20), (21), 212.06(1), (2), (14), 212.07(1), 212.08(6), (7)(bbb), 212.085, 212.18(2), 212.183, 213.37 FS. History—New 6-3-80, Amended 11-15-82, Formerly 12A-1.94, Amended 1-2-89, 8-10-92, 6-28-04,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gary Gray, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4729.

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 Rule Development was published in the Florida Administrative Weekly on July 30, 2010 (Vol. 36, No. 30, pp. 3462-3463). Comments were received at the rule development workshop held on August 25, 2010. In response, changes have been made to the proposed amendments to Rule 12A-1.094, F.A.C.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-7, FLORIDA ADMINISTRATIVE CODE
SEVERANCE TAXES AND FEES
AMENDING RULES 12B-7.006, 12B-7.008, and 12B-7.026

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12B-7.006, F.A.C. (Exemptions and Credits): (1) update the exemptions listed to include the exemption provided in Section 211.027(3), F.S., for gas vented or flared directly into the atmosphere when the gas is not otherwise sold; (2) provide that provisions for the tax credit available against the tax paid on the production of oil or gas in Florida are provided in Rule Chapter 12-29, F.A.C., as proposed; and (3) update the information on how to obtain copies of forms from the Department.

The proposed amendments to Rule 12B-7.008, F.A.C. (Public Use Forms), adopt, by reference, updates to Forms DR-144 and DR-144ES for reporting the tax on gas and sulfur production in Florida and Forms DR-145 and DR-145X for reporting the tax on oil production in Florida to: (1) provide instructions on reporting the tax credit available against the tax paid on oil or gas production in Florida for contributions to an eligible nonprofit scholarship funding organization; (2) simplify the instructions for reporting the taxes on oil, gas, and sulfur production; and (3) update the information on how to obtain copies of forms from the Department.

The proposed amendments to Rule 12B-7.026, F.A.C. (Public Use Forms), adopt, by reference, updates to Forms DR-142 and DR-142ES to: (1) provide for the reporting of the tax

on production of phosphate rock for the period January 2010 - June 2010, and for the period July 2010 - December 2010, at the rates provided in Section 3, Chapter 2010-166, L.O.F.; (2) simplify the instructions for reporting the solid mineral severance taxes; and (3) update the information on how to obtain copies of forms from the Department.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

Section 3, Chapter 2010-166, L.O.F., increases the base rate of tax on the severance of phosphate rock to \$1.71 per ton beginning July 1, 2010, and decreases the base rate of tax on the severance of phosphate rock to \$1.61 per ton beginning July 1, 2011. The total tax rate, including the surcharge imposed under Section 211.3101(11), F.S., remains at \$1.38 per ton.

The Florida Tax Credit Scholarship Program, as amended by section 1, Chapter 2010-24, L.O.F., allows taxpayers to receive a credit allocation for contributions made to nonprofit scholarship funding organizations. Beginning January 1, 2011, a tax credit of 100 percent of the contribution is allowed against any tax due on oil production in Florida or against any tax due on 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. Emergency Rule 12ER10-04, F.A.C., and proposed Rule Chapter 12-29, F.A.C., Florida Tax Credit Scholarship Program, 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 amendments to Rule 12B-7.006, F.A.C. (Exemptions and Credits), are necessary to: (1) update the exemptions listed in the rule to include the exemption provided in Section 211.027(3), F.S., for gas vented or flared directly into the atmosphere when the gas is not

otherwise sold; (2) provide that provisions for the tax credit available against the tax paid on the production of oil or gas in Florida are provided in Rule Chapter 12-29, F.A.C., as proposed; and (3) update the information on how to obtain copies of forms from the Department.

The proposed amendments to Rule 12B-7.008, F.A.C. (Public Use Forms), are necessary to adopt, by reference, updates to Forms DR-144 and DR-144ES for reporting the tax on gas and sulfur production in Florida and Forms DR-145 and DR-145X for reporting the tax on oil production in Florida to: (1) provide instructions on reporting the tax credit available against the tax paid on oil or gas production in Florida for contributions to an eligible nonprofit scholarship funding organization; (2) simplify the instructions for reporting the taxes on oil, gas, and sulfur production; and (3) update the information on how to obtain copies of forms from the Department.

The proposed amendments to Rule 12B-7.026, F.A.C. (Public Use Forms), are necessary to adopt, by reference, updates to Forms DR-142 and DR-142ES to: (1) provide for the reporting of the tax on production of phosphate rock for the period January 2010 - June 2010, and for the period July 2010 - December 2010, at the rates provided in Section 3, Chapter 2010-166, L.O.F.; (2) simplify the instructions for reporting the solid mineral severance taxes; and (3) update the information on how to obtain copies of forms from the Department.

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 August 13, 2010 (Vol. 36, No. 32, pp. 3686-3687), to advise the public of the development of changes to Rule 12B-7.006, F.A.C. (Exemptions and Credits), Rule 12B-7.008, F.A.C. (Public Use Forms), and Rule 12B-7.026, F.A.C.(Public Use Forms), and to provide that, if requested in writing, a rule development workshop would be held on August 31, 2010. No request was received by the Department. No written comments have been received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

SEVERANCE TAXES AND FEES

RULE NO: RULE TITLE:

12B-7.006 Exemptions and Credits

12B-7.008 Public Use Forms

12B-7.026 Public Use Forms

PURPOSE AND EFFECT: Section 3, Chapter 2010-166, L.O.F., increases the base rate of tax on the severance of phosphate rock to \$1.71 per ton beginning July 1, 2010, and decreases the base rate of tax on the severance of phosphate rock to \$1.61 per ton beginning July 1, 2011. The total tax rate, including the surcharge imposed under Section 211.3101(11), F.S., remains at \$1.38 per ton.

The Florida Tax Credit Scholarship Program, as amended by section 1, Chapter 2010-24, L.O.F., allows taxpayers to receive a credit allocation for contributions made to nonprofit scholarship funding organizations. Beginning January 1, 2011, a tax credit of 100 percent of the contribution is allowed against any tax due on oil production in Florida or against any tax due on 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. Emergency Rule 12ER10-04, F.A.C., and proposed Rule Chapter 12-29, F.A.C., Florida Tax Credit Scholarship Program, 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 purpose of the proposed amendments to Rule 12B-7.006, F.A.C. (Exemptions and

Credits), is to: (1) update the exemptions listed in the rule to include the exemption provided in Section 211.027(3), F.S., for gas vented or flared directly into the atmosphere when the gas is not otherwise sold; (2) provide that provisions for the tax credit available against the tax paid on the production of oil or gas in Florida are provided in Rule Chapter 12-29, F.A.C., as proposed; and (3) update the information on how to obtain copies of forms from the Department.

The purpose of the proposed amendments to Rule 12B-7.008, F.A.C. (Public Use Forms), is to adopt, by reference, updates to Forms DR-144 and DR-144ES for reporting the tax on gas and sulfur production in Florida and Forms DR-145 and DR-145X for reporting the tax on oil production in Florida to: (1) provide instructions on reporting the tax credit available against the tax paid on oil or gas production in Florida for contributions to an eligible nonprofit scholarship funding organization; (2) simplify the instructions for reporting the taxes on oil, gas, and sulfur production; and (3) update the information on how to obtain copies of forms from the Department.

The purpose of the proposed amendments to Rule 12B-7.026, F.A.C. (Public Use Forms), is to adopt, by reference, updates to Forms DR-142 and DR-142ES to: (1) provide for the reporting of the tax on production of phosphate rock for the period January 2010 - June 2010, and for the period July 2010 - December 2010, at the rates provided in Section 3, Chapter 2010-166, L.O.F.; (2) simplify the instructions for reporting the solid mineral severance taxes; and (3) update the information on how to obtain copies of forms from the Department.

SUMMARY: The proposed amendments to Rule 12B-7.006, F.A.C. (Exemptions and Credits): (1) update the exemptions listed to include the exemption provided in Section 211.027(3), F.S., for gas vented or flared directly into the atmosphere when the gas is not otherwise sold; (2) provide that provisions for the tax credit available against the tax paid on the production of oil or

gas in Florida are provided in Rule Chapter 12-29, F.A.C., as proposed; and (3) update the information on how to obtain copies of forms from the Department.

The proposed amendments to Rule 12B-7.008, F.A.C. (Public Use Forms), adopt, by reference, updates to Forms DR-144 and DR-144ES for reporting the tax on gas and sulfur production in Florida and Forms DR-145 and DR-145X for reporting the tax on oil production in Florida to: (1) provide instructions on reporting the tax credit available against the tax paid on oil or gas production in Florida for contributions to an eligible nonprofit scholarship funding organization; (2) simplify the instructions for reporting the taxes on oil, gas, and sulfur production; and (3) update the information on how to obtain copies of forms from the Department.

The proposed amendments to Rule 12B-7.026, F.A.C. (Public Use Forms), adopt, by reference, updates to Forms DR-142 and DR-142ES to: (1) provide for the reporting of the tax on production of phosphate rock for the period January 2010 - June 2010, and for the period July 2010 - December 2010, at the rates provided in Section 3, Chapter 2010-166, L.O.F.; (2) simplify the instructions for reporting the solid mineral severance taxes; and (3) update the information on how to obtain copies of forms from the Department.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. 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: 211.075(2), 211.125(1), 211.33(6), 213.06(1), 1002.395(13) FS.

LAW IMPLEMENTED: 92.525(1)(b), (2), (3), (4), 211.02, 211.025, 211.0251, 211.026,

211.027, 211.075, 211.076, 211.125, 211.30, 211.31, 211.3103, 211.3106, 211.33, 213.755(1), 1002.395 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 the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least 48 hours before such proceeding by contacting Sarah Wachman at (850)410-2651. 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: Robert DuCasse, Revenue Program Administrator, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4700.

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-7, FLORIDA ADMINISTRATIVE CODE
SEVERANCE TAXES AND FEES
AMENDING RULES 12B-7.006, 12B-7.008, AND 12B-7.026

PART I TAX ON PRODUCTION OF OIL, GAS, AND SULFUR

12B-7.006 Exemptions and Credits.

(1) through (4) No change.

(5) Gas vented or flared directly into the atmosphere that is not sold is not subject to tax.

(6) Tax Credits. See Rule Chapter 12-29, F.A.C., for provisions on credits against the tax on oil production in Florida imposed under Section 211.02, F.S., or on gas production in Florida imposed under Section 211.025, F.S.

Rulemaking Specific Authority 211.125(1), 213.06(1), 1002.395(13) FS. Law Implemented 211.02, 211.025, 211.0251, 211.027, 1002.395 FS. History-New 12-28-78, Formerly 12B-7.06, Amended 12-18-94, _____.

12B-7.008 Public Use Forms.

(1)(a) The following forms and instructions are used by the Department in its administration of the taxes imposed on the production of oil, gas, and sulfur. These forms are hereby incorporated by reference in this rule.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department's Internet site at

www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 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
DR-144	Gas and Sulfur Production Quarterly Tax Return (R. <u>01/11</u> 08/08)	___ <u>01/09</u>
DR-144ES	Declaration of Estimated Gas and Sulfur Production Tax (R. <u>01/11</u> 08/08)	___ <u>01/09</u>
DR-145	Oil Production Monthly Tax Return (R. <u>01/11</u> 07/09)	___ <u>01/09</u>
DR-145X	Oil Production Monthly Amended Tax Return (R. <u>01/11</u> 07/09)	___ <u>01/09</u>

Rulemaking Authority 211.075(2), 211.125(1), 213.06(1), 1002.395(13) FS. Law Implemented 92.525(1)(b), (2), (3), (4), 211.02, 211.0251, 211.026, 211.075, 211.076, 211.125, 213.755(1), 1002.395 FS. History-New 12-28-78, Formerly 12B-7.08, Amended 12-18-94, 5-4-03, 10-1-03, 11-6-07, 1-27-09, 1-11-10,_____.

PART II SEVERANCE TAX ON SOLID MINERALS

12B-7.026 Public Use Forms.

(1)(a) The following forms and instructions are used by the Department in its

administration of the taxes and surcharge imposed on the severance of solid minerals, phosphate rock, or heavy minerals from the soils and waters of this state. These forms are hereby incorporated by reference in this rule.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at www.myflorida.com/dor/forms; or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 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-142	Solid Mineral Severance Tax Return (R. <u>01/11</u> 01/10)	___ <u>01/10</u>
(3) DR-142ES	Declaration/Installment Payment of Estimated Solid Mineral Severance Tax (R. <u>01/11</u> 01/10)	___ <u>01/10</u>

Rulemaking Authority 211.33(6), 213.06(1), 1002.395(13) FS. Law Implemented 92.525(2), 211.0251, 211.30, 211.31, 211.3103, 211.3106, 211.33, 213.755(1), 1002.395 FS. History-New 12-18-94, Amended 10-4-01, 5-4-03, 10-1-03, 11-6-07, 1-27-09, 1-11-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Robert DuCasse, Revenue Program Administrator, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4700.

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 August 13, 2010 (Vol. 36, No. 32, pp. 3686-3687). No request was received by the Department to hold a workshop. No written comments have been received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-22, FLORIDA ADMINISTRATIVE CODE
CONFIDENTIALITY AND DISCLOSURE OF TAX INFORMATION
CREATING RULE 12-22.008

SUMMARY OF PROPOSED RULE

The proposed creation of Rule 12-22.008, F.A.C. (Warrants and Liens List), provides: (1) that the Department will prepare, publish, and maintain the Warrants and Liens List authorized by Chapters 2010-138 and 2010-166, L.O.F., containing a list of taxpayers who have an outstanding tax warrant, lien, or judgment lien for the taxes, surtaxes, surcharges, or fees regulated, controlled, or administered by the Department; (2) the information that will be contained in the Warrants and Liens List and those taxpayers that will not be included; (3) that the Warrants and Liens List will be updated monthly; (4) the requirements that a taxpayer must meet to be removed from the Warrants and Liens List; and (5) that no other reports or information will be made available concerning taxpayers included in or removed from the Warrants and Liens List.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Section 10, Chapter 2010-138, and section 4, Chapter 2010-166, L.O.F., authorize the Department to publish a list of taxpayers against whom the Department has filed a warrant, notice of lien, or judgment lien certificate for taxes, surtaxes, surcharges, fees, interest, and/or penalty administered by the Department. The purpose of the creation of Rule 12-22.008, F.A.C.

(Warrants and Liens List), is to provide how the Warrants and Liens List will be published, the taxpayers and the information that will be contained in the list, and how the list will be updated and maintained by the Department. When in effect, this rule establishes the procedures that will be used by the Department to prepare, publish, update, and maintain the Warrants and Liens List containing taxpayers who have an outstanding warrant, lien, or judgment lien for taxes, interest, penalty, and/or fees administered by the Department.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

JULY 29, 2010

A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on July 9, 2010 (Vol. 36, No. 27, p. 3161), to advise the public of the creation of Rule 12-22.008, F.A.C. (Warrants and Liens List), and that a rule development workshop would be held on July 29, 2010. No written comments were received by the Department. No one from the public attended.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

CONFIDENTIALITY AND DISCLOSURE OF TAX INFORMATION

RULE NO. RULE TITLE:

12-22.008 Warrants and Liens List

PURPOSE AND EFFECT: Section 10, Chapter 2010-138, and section 4, Chapter 2010-166, L.O.F., authorize the Department to publish a list of taxpayers against whom the Department has filed a warrant, notice of lien, or judgment lien certificate for taxes, surtaxes, surcharges, fees, interest, and/or penalty administered by the Department. The purpose of the creation of Rule 12-22.008, F.A.C. (Warrants and Liens List), is to provide how the Warrants and Liens List will be published, the taxpayers and the information that will be contained in the list, and how the list will be updated and maintained by the Department. When in effect, this rule establishes the procedures that will be used by the Department to prepare, publish, update, and maintain the Warrants and Liens List containing taxpayers who have an outstanding warrant, lien, or judgment lien for taxes, interest, penalty, and/or fees administered by the Department.

SUMMARY: The proposed creation of Rule 12-22.008, F.A.C. (Warrants and Liens List), provides: (1) that the Department will prepare, publish, and maintain the Warrants and Liens List authorized by Chapters 2010-138 and 2010-166, L.O.F., containing a list of taxpayers who have an outstanding tax warrant, lien, or judgment lien for the taxes, surtaxes, surcharges, or fees regulated, controlled, or administered by the Department; (2) the information that will be contained in the Warrants and Liens List and those taxpayers that will not be included; (3) that the Warrants and Liens List will be updated monthly; (4) the requirements that a taxpayer must meet to be removed from the Warrants and Liens List; and (5) that no other reports or

information will be made available concerning taxpayers included in or removed from the Warrants and Liens List.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A statement of estimated regulatory costs has not been prepared by the agency. Any person who wishes to provide information regarding the statement of estimated 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: 213.053(20) FS, s. 10, Ch. 2010-138, s. 4, Ch. 2010-166, L.O.F.

LAW IMPLEMENTED: 55.10, 55.202, 55.204, 95.091(1)(a), (b), 198.22, 198.33, 199.262, 201.16, 211.125(7)(a), 211.33(7)(a), 213.053(20), (21), 213.21(2), (4), 213.69, 213.731, 213.733, 220.813, 443.1316, FS., s. 10, Ch. 2010-138, s. 4, Ch. 2010-166, L.O.F.

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 the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least 48 hours before such proceeding by contacting Sarah Wachman at (850)410-2651. 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: Brinton Hevey, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of

Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 488-7157.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-22, FLORIDA ADMINISTRATIVE CODE
CONFIDENTIALITY AND DISCLOSURE OF TAX INFORMATION
CREATING RULE 12-22.008

12-22.008 Warrants and Liens List.

(1) Scope.

(a) Section 213.053(20), F.S., authorizes the Department to publish a list of taxpayers against whom the Department has filed a warrant, notice of lien, or judgment lien certificate for the taxes, surtaxes, surcharges, or fees, listed in Section 213.05, and Chapter 443, F.S., and administered by the Department. This rule outlines the only means by which the Department will publish or provide this information.

(b) The information that Section 213.053(20), F.S., authorizes the Department to publish is available in the public records of Florida. Section 213.053(20), F.S., authorizes the Department to consolidate portions of that public information in a list and to publish that list to the public. Neither Section 213.053(20), F.S., nor this rule permits the Department or its employees to otherwise disclose confidential information.

(2) Warrants and Liens List.

(a) The Warrants and Liens List will include:

1. The two taxpayers from each of the 67 Florida counties with the highest unsatisfied warrant and lien totals; and
2. All other taxpayers who have unsatisfied warrant and lien totals of \$100,000 or greater.

(b) For each taxpayer included on the Warrants and Liens List, the following information will be provided:

1. Taxpayer name, owner name based upon information provided to the Department and on file with the Department of State at the time the warrant or lien was filed, and business location address;

2. County in which the taxpayer is located;

3. Warrant or lien number(s); and

4. Amount of each outstanding warrant or lien as recorded.

(c) The Warrants and Liens List will not include any taxpayer that has:

1. Entered into a closing agreement;

2. Entered into a stipulated payment agreement with the Department that has not been terminated pursuant to Rule 12-17.009, F.A.C.; or

3. In place any other agreement or order that provides for payment of the outstanding warrant(s) or lien(s) amount.

(d) The Warrants and Liens List will be posted to the Department's Internet site at www.myflorida.com/dor.

(3) Maintenance of the Warrants and Liens List.

(a) The Warrants and Liens List will be updated monthly to include those taxpayers as provided in paragraph (2)(a).

(b) Any taxpayer included on the Warrants and Liens List who pays the outstanding warrant(s) or lien(s) amount, enters into a stipulated payment agreement for the outstanding warrant(s) or lien(s) amount, or has put in place any other agreement or order that provides for

payment of the outstanding warrant(s) or lien(s) amount will be removed from the list within two business days of the date:

1. Payment of the outstanding liability is received by the Department;

2. A stipulation payment agreement is executed by the taxpayer and the Department for the amount of the outstanding liability; or

3. Any other agreement or order that provides for payment of the outstanding warrant(s) or lien(s) has been put in place.

(4) No other reports or information will be made available concerning the taxpayers included in or removed from the Warrants and Liens List.

Rulemaking Authority 213.053(20) FS, s. 10, Ch. 2010-138, s. 4, Ch. 2010-166, L.O.F. Law Implemented 55.10, 55.202, 55.204, 95.091(1)(a), (b), 198.22, 198.33, 199.262, 201.16, 211.125(7)(a), 211.33(7)(a), 213.053(20), (21), 213.21(2), (4), 213.69, 213.731, 213.733, 220.813, 443.1316 FS., s. 10, Ch. 2010-138, s. 4, Ch. 2010-166, L.O.F. History-New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Brinton Hevey, Tax Law Specialist,
Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443,
Tallahassee, Florida 32314-7443, telephone (850) 488-7157.

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
Rule Development was published in the Florida Administrative Weekly on July 29, 2010 (Vol.
36, No. 27, p. 3161). No written comments were received by the Department. No one from the
public attended.

September 17, 2010

MEMORANDUM

TO: The Honorable Charlie Crist, Governor
Attention: Pat Gleason, Director of Cabinet Affairs

The Honorable Bill McCollum, Attorney General
Attention: Rob Johnson, Cabinet Affairs

The Honorable Alex Sink, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide
Amber Hughes, Cabinet Aide

The Honorable Charles Bronson, Agriculture Commissioner
Attention: Jim Boxold, Chief Cabinet Aide
Cathy Giordano, Cabinet Aide

FROM: Robert Babin, Director of Legislative and Cabinet Services

SUBJECT: Requesting Approval to Hold Public Hearings on Proposed Rules

What is the Department Requesting? The Department requests approval to publish Notices of Proposed Rule to schedule public hearings for sales and use tax rules that relate to hotel reward point programs.

Why are These Proposed Rules Necessary? To clarify the tax consequences relating to the use of reward points. [*Rule 12A-1.0615, Florida Administrative Code*]

What Do These Proposed Rules Do? This rulemaking will clarify when transient rental taxes are due by members that redeeming earned points for hotel rooms and when the taxes are due by hotels participating in a reward points program.

Were Comments Received from External Parties? The Department has conducted three rule development workshops (June 24, 2010, October 13, 2009, and September 19, 2006) to solicit comments from interested parties. Representatives from counties who administer the local option transient rental taxes continue to maintain their position that reward points are

ATTACHMENT # 4

Memorandum
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consideration paid for accommodations and should be subject to the transient rental taxes. Representatives from the hotel industry and from Orange County support, with minor modifications, the proposed rule presented at the workshop on June 24, 2010.

Are There Significant Administrative Issues in These Rules? The proposed rule reflects the opinion of the Florida Senate Report Number 2005-131, Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program (November 2004). This report provides that “all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel reward points members, tax is not due when such funds are redeemed,” and that “if in any given month, a hotel is reimbursed more than was paid into the fund by the hotel, tax is due on the amount of money not paid to the fund that month.” The proposed rule reflects this position regarding the taxability of transactions of hotel reward points programs.

Attached are copies of:

- Summary of the proposed rule
- Statement of facts and circumstances justifying the rule
- Federal relation statement
- Summaries of workshop
- Proposed Notice of Proposed Rule with proposed rule text

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
CREATING RULE 12A-1.0615

SUMMARY OF PROPOSED RULE

The proposed creation of Rule 12A-1.0615, F.A.C. (Hotel Reward Points Programs): (1) provides that the rule will govern the taxation of transactions between hotel reward points program administrators and hotels within the program; (2) provides that no tax is to be collected from a member of a program when the member uses a certificate or confirmation number and is provided a room at no charge; (3) defines the terms “hotel,” “reimbursements,” and “contributions”; (4) provides that tax is due when a hotel receives more in reimbursements from the program fund than it paid in contributions to the program fund in the prior calendar year; (5) provides the calculation of taxable reimbursements for a hotel's initial twelve months of participation in a program and for each calendar year subsequent to the initial year of operation, including examples of the calculations; and (6) provides the recordkeeping requirements of hotels participating in a reward points program.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Rule 12A-1.0615, F.A.C. (Hotel Reward Points Programs), is being created to provide for the application of Florida tax in situations involving hotel reward points programs within the transient rentals industry that reflects the findings of Report Number 2005-131, “Application of

the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program,” issued by the Senate Committee on Government Efficiency Appropriations. This rule sets forth when transient lodging accommodations provided to reward points programs members will be subjected to Florida’s taxes on those accommodations, including the state sales tax, local surtax, and any locally-imposed convention development tax, tourist development tax, tourist impact tax, and municipal resort tax. This rule also sets forth when transactions between the administrator of a hotel reward points program and the hotel participating in the program are subject to tax.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF PUBLIC MEETING

HELD ON APRIL 2, 2004

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a public meeting in the Florida Administrative Weekly on March 26, 2004 (Vol. 30, No. 13, p. 1307). A public meeting was held on April 2, 2004, at the Disney/SBA National Entrepreneur Center, located at 315 E. Robinson Street 100, Training Room II, Orlando, Florida, to allow members of the public to ask questions and make comments regarding the proper taxation, if any, of hotel reward points programs.

PARTIES ATTENDING

For the Department of Revenue

JEFF KIELBASA, Deputy Executive Director
MARSHALL STRANBURG, Deputy General Counsel, Office of the
General Counsel
LINDA BRIDGES, Revenue Program Administrator, Technical
Assistance and Dispute Resolution
GARY GRAY, Tax Law Specialist, Technical Assistance and Dispute
Resolution
ALLEN ADAMS, Department of Revenue
BECKY BRUSHWOOD, Department of Revenue
CARMEN ROSAMONDA, Department of Revenue

For the Public

CATHY ADRID, Lake County Tax Collector
LINDA BONNETT, Sarasota County Tax Collector
EDWARD BROWN, Bay County Clerk of the Courts
USHER LARRY BROWN, Orange County Comptroller
ROBERT BURTON, St. Johns County
KAYE COLLIE, General Counsel, Orange County
JERRY CRANDALL, O.C.C.C./Bus.
DAVE CRUZ, Broward County
CHRISTOPHER DAWKINS, Deputy Director of County Audit, Orange
County Comptroller
TOM DRAGE, County Attorney, Orange County
ANNE ROSE FARR, Tourist Tax Administrator, Martin County Tax
Collector
JACK FOUTS, Polk County Tax Collector
ERIC GASSMAN, Director of Financial Management, Orange County
JESSICA GIL, Monroe County
YASMI GOVIN, Broward County
SCOTT GROBERSKI, Manager, Grant Thornton, L.L.P.
MARTHA O. HAYNIE, Orange County Comptroller
ARTHUR E. HEINTZ, Supervisor/Auditor, Volusia County
KENNETH HELMS, Manager – Sales Property Tax, Intercontinental
Hotels Group
LARRY HENRICKS, Orlando Orange County CVG
DANISE HENRIQUE, Monroe County Tax Collector
LIZ KLABER, Sarasota County Tax Collector
BARBARA KUMBSKY, Senior Revenue Auditor, Palm Beach County
ALEX LASKOWSKI, Grant Thornton, L.L.P.
BRIAN LEWIS, Senior Review Officer, Orange County Comptroller
SCOTT MCALISTER, Hillsborough County
LILA MCHENRY, Assistant County Attorney, Orange County
JOE MILLIKEN, Brevard County Tax Collector
DIANE NELSON, Tax Collector, Pinellas County

CAROL PARKER, Florida Hotel & Motel Association
JERRY RHODES, Orange County Comptroller
CLAUDIA RILEA, Audit Supervisor, Orange County Comptroller
GRETA ROWLEY, St. Lucie County Tax Collector
FRANK SCHNEIDER, Audit Manager, Osceola County
SUE SINQUEFIELD, Auditor, Manatee County Tax Collector
GARY SMITH, Florida Hotel & Motel Association
J. CARL SMITH, Orange County Comptroller
ALBERT SORRELL, St. Lucie County Tax Collector
KEITH STAATS, Director, Grant Thornton, L.L.P.
JARELL STINTON, Manatee County Tax Collector
ERIN SULLIVAN, Chief Tax Auditor, Pinellas County Tax Collector
JOE TEDDER, Polk County Tax Collector
WILLIAM CARLOS THOMAS, Chief Deputy Tax Collector, Pinellas
County
BILL VAN ANTWERP, Director Lodging Tax, Marriott International
TOM WAITS, President and CEO, Florida Hotel & Motel Association
STEPHAN ZYRICKY, Hillsborough County

WRITTEN COMMENTS LINDA K. BRONGEL, Hyatt Hotels Corporation
USHER L. BROWN, Brown, Salzman, Weiss and Garganese, P.A.
RICHARD T. CROTTY, Orange County Chairman
ALEX LASKOWSKI, Grant Thornton LLP
DIANE NELSON, Pinellas County Tax Collector
FRANK SCHNEIDER, Osceola County Audit Manager
KEITH STAATS, Grant Thornton, LLP

Ms. Linda K. Brongel, Hyatt Hotels Corporation, submitted written comments, dated May 7, 2004, stating the differences between her company's reward programs and those discussed at the meeting. She stated that her company's program does not permit members to exchange points for merchandise; there is no market for the company's reward points; points may only be redeemed by members of the program; and the sale or barter of points is prohibited. Ms. Brongel did not agree that there is consideration for a room when an award is redeemed by a guest. She stated that the points have no value to anyone outside the program and are akin to a coupon. Ms. Brongel provided information relating to the transaction between the hotel and the reward point program. An example was provided of a room costing \$100. When a reward point

guest stayed at the hotel, the guest paid \$100 for the room and paid tax on \$100. The full amount of tax was remitted. The hotel retained \$96 and remitted \$4 to the reward point program. When the guest redeems points for a free room, the hotel is paid an agreed amount from the fund. The monies paid from the fund have already been taxed at the time the points were earned. The fund is not a separate legal entity and the transfer from the fund to the hotel has no legal significance. The hotel has received its own money back in a non-taxable transaction. Ms. Brongel also provided an alternative argument. She stated that the \$4 could be viewed as a payment by the guest to the reward point program and not to the hotel for the occupancy of the room. Therefore, the guest only paid \$96 for the room and only \$96 should have been subject to tax. When the hotel receives payment from the fund for the redeemed points, the hotel would receive consideration from the guest by means of their prior payment into the fund and that amount would then be taxable to the guest.

Mr. Usher Brown, Brown, Salzman, Weiss & Garganese, P.A., submitted written comments, dated April 7, 2004, reiterating his opinion that reward points exchanged by a reward point member for an accommodation are subject to tax. Mr. Brown had previously issued a letter of opinion to Ms. Martha Haynie, Orange County Comptroller, and Ms. K. Kaye Collie, General Counsel, Orange County Comptroller, on April 1, 2004, setting out his position on the issues. That letter was the basis for his presentation at the meeting. His letter of April 7, 2004, addressed the analogy of a manufacturer's coupon that was presented at the meeting and provided case law relevant to Mr. Brown's discussion of an agency relationship. Mr. Brown stated that the analogy to a manufacturer's coupon was erroneous and relied on Technical Assistance Advisement 95A-011 in support of his position.

Mr. Richard T. Crotty, Orange County Chairman, submitted written comments, dated April 22, 2004, stating that the substance of his opinion regarding the taxability of reward point programs is discussed in the legal opinion of Mr. Usher Brown. He stated his opinion that the Department of Revenue's determination in this matter may have consequences outside the scope of reward point transactions, including such transactions as third-party Internet bookings, third-party timeshare exchanges, and any other transaction where the final consideration is not paid directly by the guest at the place of lodging.

Mr. Alex Laskowski, Grant Thornton LLP, submitted written comments, dated May 10, 2004, reiterating his opinion that reward points exchanged by a reward point member for an accommodation are not subject to tax. Mr. Laskowski addressed the definitions of "guest" and "public lodging establishment," and concluded that the central reservation system did not fall within either definition. He stated that the guest redeems points through the central reservation system; therefore, there is no consideration between the guest and the hotel. Mr. Laskowski then addressed the issue of whether the reward points constitute consideration and concluded that the points have no value and the redemption of points can therefore not be classified as consideration for an accommodation. Mr. Laskowski addressed whether the reimbursement or credit received by a hotel from the central program fund constituted consideration or relief from debt. He concluded that the reimbursement or credit was not consideration or a relief from debt. Finally, Mr. Laskowski referenced three previously issued Letters of Technical Advice that had concluded that the redemption of reward points by a guest was not taxable.

Ms. Diane Nelson, Pinellas County Tax Collector, submitted written comments, dated April 8, 2004, stating that Ms. Sara Richardson, Assistant Pinellas County Attorney, had reviewed the written opinion of Mr. Usher Brown and concurred in Mr. Brown's opinion that

there is consideration between a reward point member and a hotel. She stated her concern that some hotels appeared to have stopped remitting tax on reward programs, and she asked if the hotels would be subject to back taxes, penalties, and interest if the Department of Revenue issued a Technical Assistance Advisement on the issue.

Mr. Frank Schneider, Osceola County Audit Manager, submitted written comments, dated April 23, 2004, stating that the Osceola County Commission Auditor's Office has reviewed the taxability of reward programs on multiple occasions over the previous year and a half. He stated that the reward program was unable to overcome the fact that consideration was provided for the accommodations and was subject to tax. He stated that it was the county's opinion that the origin of the consideration is irrelevant to the taxability of the transaction.

Mr. Keith Staats, Grant Thornton LLP, submitted written comments, dated May 10, 2004, reiterating his position that reward points exchanged by a reward point member for an accommodation are not subject to tax. Mr. Staats discussed the differences between a transaction not subject to tax and a transaction exempt from tax. He stated that a transaction not subject to tax was subject to a different statutory construction and that the law must be construed strongly in favor of the taxpayer and against the government. Mr. Staats reiterated that the hotels and not the brand fund the reward point programs and that the monies belong at all times to the individual hotels. He again stated that no consideration was received by the hotels from the guest when the guest exchanges his points for a room.

NATURE OF COMMENTS RECEIVED

Nature of Hotel Reward Point Programs

Mr. Alex Laskowski, Grant Thornton LLP, discussed the nature of a hotel reward point program. He stated that the programs were created to develop customer loyalty and to give

rewards to customers for free or for the customers' stays. Program members accumulate points, which they can exchange for free stays. Mr. Laskowski stated that the key factor is that the programs are funded by the hotel owners. The program is managed by the brand name, which is responsible for ensuring compliance by the hotel owners. Mr. Laskowski stated that the program fund is not a separate legal entity or an entity; rather, it just a pool of money. If the program is discontinued, any money remaining in the fund is returned to the hotel owners. The brand name has no right to the money.

Mr. Laskowski stated that reward points cannot be transferred or sold on the open market. Program members cannot exchange or sell their points. The points have no redeemable monetary value and can only be transferred within the same household.

Mr. Laskowski explained how the programs he represented were funded. When a guest checks into a hotel, he presents his reward card or gives the hotel his reward account number. The guest earns points for the stay, based on how much is spent for the accommodation. The guest may also earn points on other purchases at the facility, such as in an on-site restaurant. The amount of points earned is usually 2-6% of the room rate. The hotel owner contributes this percentage of the room rate into the program fund. All applicable taxes are paid on the full room rate by the guest. When the guest redeems his points, the hotel receives a reimbursement or credit but receives no payment. The reimbursement or credit is offset against the amount that was required to be contributed to the fund. Mr. Laskowski stated that the reimbursement or credit may be recorded as revenue to the hotel, but that it was actually not a credit but an expense, but was accounted for as revenue. The reimbursement or credit is less than the full room rate and does not even cover the cost accrued by the hotel owner. The reimbursement or credit may be greater under some programs when the hotel is fully occupied.

Mr. Laskowski stated that it was a misconception that hotels in high tourist areas receive more money from the fund than those hotels contribute. He stated that hotels in those areas have more rooms and the high tourist areas have more brand hotels and restaurants where people earn points.

Mr. Laskowski stated his clients' belief that "it's a formula that's used to calculate how much at the end of the month or at the end of the accounting period . . . the hotel will pay into the fund." He stated that a hotel will only have 12 or 13 transactions per year, one for each month or accounting period. Mr. Laskowski stated that the program should be "a wash" overall.

Mr. Laskowski stated that the program manager charges a management fee to the hotels for overseeing the fund. Mr. Bill Van Antwerp, Marriott International, clarified that the fee is for the actual administration of the fund and the marketing costs associated with the program. His company's management agreement states that a brand hotel is required to be a member of the program. A percentage of the money contributed to the program by the hotel is paid to the program management to manage the fund.

Mr. Van Antwerp stated that, prior to 1993, his company treated all transactions relating to its reward point program as inter-company transfers and the transfers were exempt from tax. In 1993, his company was restructured and the reward point program was split from the real estate holdings.

Ms. Sue Siquefield, Manatee Tax Collector, questioned where the money goes that is paid by reward point members for different levels of program membership. Mr. Kenneth Helms, Intercontinental Hotels Group, responded that all monies go into the fund and the reward point member is given a different amount of points for different membership levels. Ms. Siquefield questioned how the payment for membership levels equated with the statements that the monies

all belonged to the hotels. Mr. Laskowski stated that you cannot purchase points under many of the programs and, under those programs that allow the purchasing of points, the money makes up a diminutive portion of the fund. Ms. Sinquefield also stated that the InterContinental program also allowed the transfer of points between members. Mr. Laskowski replied that the refund claims that had been filed were for earlier time periods during which the purchase or transfer of points probably was not allowed. He also stated that the programs were consistently changing because the programs were offered for the purpose of marketing.

Mr. Joe Tedder, Polk County Tax Collector's Office, asked who manages the funds. Mr. Laskowski replied that the funds were managed by a division or separate entity of the brand hotel. Mr. Van Antwerp stated that his company's fund was managed by a part of the company's marketing controller area. Mr. Tedder questioned whether each hotel had its own entity that manages its fund. Mr. Van Antwerp answered in the negative and stated that the fund was a pool of money that was managed by a group at the brand hotel's corporate headquarters. Mr. Tedder asked if the brand pays the commission, and Mr. Van Antwerp stated that it was not a commission but other costs. He stated that the fund manager receives whatever costs are incurred in the administration of the fund. Mr. Tedder asked who records the cost to the Internal Revenue Service. Mr. Van Antwerp stated that there were ongoing discussions with the Internal Revenue Service on that issue and that the brand will report the costs as income.

Mr. Marshall Stranburg, Department of Revenue addressed the use or exchange of points for things other than hotel stays and upgrades. He stated that the points could be used for various services offered at the hotel or for the purchase of merchandise. He stated that the points seemed to have value for the other things that could be purchased using the points. Mr. Van Antwerp

stated that the value of the purchases was very small compared to the amount of points used for free rooms.

Mr. Stranburg asked the amount of other purchases and Mr. Van Antwerp stated that it was probably less than 2%. Mr. Stranburg asked whether the use of points for vacation packages were considered room redemptions. Mr. Van Antwerp replied that it was part of room redemptions. Mr. Laskowski clarified that Mr. Stranburg's question did not address the preview of timeshares but was addressed at the redemption of points for vacation packages. He stated that, "Vacation packages will be similar to . . . if they pay \$200 for vacation package, you know whoever reports to them lets that room then they'll collect and pay the taxes of course."

Mr. Stranburg asked about restaurant charges being included in the charge that is made by the fund to the individual hotels. He asked if the restaurant charges were made of the amount put on a guest's bill or was it made of the gross receipts of the restaurant. Mr. Van Antwerp replied that it was the gross receipts. Mr. Laskowski then stated that it would be whatever was charged on the guest's folio. If a program provided that a guest earned points on restaurant charges, then the fee to the hotel would be based on the amount charged to the guest's bill for restaurant purchases.

Mr. Jeff Kielbasa, Department of Revenue, asked about reward point members earning points through partnerships with credit cards and other programs. He asked if money from those partnerships also goes into the funds. Mr. Van Antwerp answered in the affirmative. Mr. Kielbasa then asked who owns that money. Mr. Van Antwerp clarified that the points earned through those partnerships belonged to the reward point member but had no value. The points could not be equated to the amount of money in the fund because not everyone redeems their points. Mr. Kielbasa restated the previous statement that the money in the fund belonged to the

hotel. He asked who would own the money in the fund that came from the outside partnerships. Mr. Laskowski stated that it would go out to the hotels in that it would pay for the management fee. He stated that it would be allocated evenly. He reiterated that the funds were constantly changing and that the earning of points from outside companies was a new concept. He stated that money from those partnerships made up a small part of the funds, probably less than 5%.

Mr. Kielbasa asked about rulings that the industry had received from other states. He asked whether those rulings were published, from what states the rulings were received, and could the rulings be shared. Mr. Van Antwerp stated that there was a difference in some states between what the state said on the issue and what the audit group said. Mr. Laskowski stated that most of the rulings were not published. He stated that a few from Texas were listed in his handout. He also stated that directive number 99-2 from Massachusetts was published.

Ms. Linda Bridges, Department of Revenue, asked about the distribution of money back to the hotels if the programs were discontinued. She asked if the money would be distributed pursuant to a formula. Mr. Van Antwerp stated that he did not believe that would ever happen and had only brought up the subject to emphasize that the money belonged to the hotels. Mr. Laskowski stated that the money would be allocated based on each balance. If a hotel had a credit, then the hotel would receive money back. Ms. Bridges asked if a hotel that had a debit balance would be required to pay more into the fund. Mr. Laskowski responded that he could not answer the question. Mr. Van Antwerp stated that he did not think so but that he could not answer.

Ms. Lila McHenry, Orange County Attorney, asked if a hotel would get the money back if the hotel changes ownership and is no longer in the franchise. Mr. Van Antwerp answered in the negative. Mr. Laskowski also answered in the negative and stated that it would be part of the

intangible goodwill value of the hotel. Mr. Van Antwerp stated that the hotels were funding a marketing program and the hotels pay a fee for that program.

Ms. Erin Sullivan, Pinellas County Tax Collector, asked how a hotel books a room redemption. She asked if the hotel would book the full room value into its room revenue. Mr. Van Antwerp answered in the negative and stated that it would be put into room revenue and then taken out, so as to allow the hotel to reach its budgeted numbers for revenue. He stated that the hotel reports the revenue but then takes it out and puts it into another account so that it can be offset against the charge. Ms. Sullivan then asked if the hotel would notify the program that it had a certain number of room redemptions and would receive reimbursement. Mr. Van Antwerp answered in the affirmative and stated that it can be done in several different ways. He stated that the most common method was now electronic. The guest arrives at the hotel and the hotel has the certificate number for the guest. The hotel verifies the customer's name, provides the room, transmits information to the reward point program that the certificate number was used, and the program reimburses the hotel. Ms. Sullivan asked if the reimbursement was booked into the room account when it was received. Mr. Van Antwerp answered in the negative and stated that the reimbursement goes into the offset account where the credit is taken away from the revenue. Ms. Sullivan asked about how taxes were paid on the reimbursements. Mr. Van Antwerp stated that reward points are reimbursed at a rate set by the individual hotel. Ms. Sullivan asked if the reimbursement went from the room account into the tax account. Mr. Van Antwerp answered in the affirmative and stated that it would be backed out of the room account because it was an exempt sale, provided that the reimbursements were determined to be non-taxable. He stated that the revenue was currently being reported in the room account as rewards redemption and that the tax was recorded and paid.

Mr. Frank Schneider, Osceola County, asked if the hotels were declaring taxes to the federal government on the pro-rata shares of the funds that are paid by the outside credit cards. Mr. Van Antwerp stated he could not answer the question.

Mr. Schneider stated that a guest could stay in his county using points earned from a credit card and would not have paid taxes on that stay whatsoever. Mr. Van Antwerp responded that those points would not have been taxed but that those points make up a very small part of the program.

Mr. Christopher Dawkins, Orange County Comptroller, asked for clarification on points earned on restaurant purchases. He stated that those purchases had been analogized to a program offering a free night as part of a five-night stay. He stated that the restaurant purchases appeared to constitute a significant part of the points earned. Mr. Laskowski stated that the only way to earn points on restaurant purchases was to charge the purchases to the room. He also stated that the hotel will pay money or receive a debit to the fund based on a room rate and the hotel's food and beverage. Mr. Laskowski stated that the point redemption for a free room was analogous to receiving a free room as part of a five-night stay. He stated that tax is paid on five nights only when the guest stays five nights and receives the sixth night free. Mr. Tom Drage, Orange County Attorney, asked how Florida gets the benefit of the tax paid if the nights paid for occurred outside Florida and the free room is used in Florida. Mr. Drage stated that the industry was arguing that it was paying duplicate tax as a result of the reward point programs. Mr. Laskowski responded that complimentary rooms are exempt in most states. He also stated that the county received more money from the guest's other activities while staying in the free room. Mr. Drage stated that the fact that guests using free nights spend money in the county does not diminish the fact that the county was trying to get funding from the tourist development tax when

someone stays in a room for which consideration was given. Mr. Keith Staats, Grant Thornton LLP, responded that the free night as part of a longer stay was used to show how free nights under a reward point program was similar to other types of situations. He stated that it was not intended to be a legally responsive answer.

Mr. Usher Brown, Orange County Comptroller, asked for clarification on how individuals can earn points. He stated that individuals could earn points for staying in a lodging, by purchase, through a credit card under some programs, and through restaurant purchases. Mr. Laskowski confirmed Mr. Brown's statement.

Ms. Barbara Kumbisky, Palm Beach County, stated that the industry's position was that the funding and administration of the programs were important aspects of making the programs exempt. She also stated that the industry had said that the funds could not be audited. She asked if the counties would be required to take the industries word on the funding and administration. Mr. Van Antwerp responded that the individual hotels would be the parties being audited. Ms. Kumbisky asked how she could know that what the industry said would not change in six months. Mr. Laskowski stated that the programs keep evolving but that the fund was not a separate taxpayer that would be audited.

Ms. Siquefield asked if the reward point member makes a reservation through a separate system or through a central reservation system. Mr. Van Antwerp answered that the rewards program uses the same people to do both things. Ms. Siquefield then questioned the conclusion that there is no consideration when a reservation is made through a central reservation system. Mr. Laskowski responded that the central reservation system is not a lodging establishment. A discussion ensued comparing the different ways in which a person can obtain the use of a hotel room, such as through a travel agent or by walking into a hotel and asking for a room. Mr. Van

Antwerp commented that an argument could be made that a travel agent was an agent of the hotel and so any transaction occurring through the travel agent was taxable. Mr. Laskowski stated that some could argue that the central reservation system was also an agent, but stated that he did not believe that was the case.

Mr. Larry Henricks, Orange County CVG, and Mr. Van Antwerp discussed whether the points used by a reward point member have value. Mr. Henricks stated the points have value and Mr. Van Antwerp disagreed.

Ms. Claudia Rilea, Orange County Comptroller, asked if a reward point member can redeem points at a hotel that does not participate in the program. Mr. Van Antwerp responded in the negative, with the exception of the use of points for timeshare units.

Ms. Ann Rose Farr, Martin County Tax Collector, asked if a reward point member earns points on his or her stay when points are used. Mr. Van Antwerp and Mr. Laskowski both answered in the negative.

Legal Basis for Exempt Nature of Reward Point Programs

Mr. Laskowski stated that the industry believed that room redemptions provided through reward point programs were not subject to sales tax under section 212.03(4), F.S. That statute states that no tax shall be imposed on rooms provided to guests when there is no consideration between the guests and the lodging establishment. Mr. Laskowski stated that the reward point member was the guest based on the definition of the term. The definition of a public lodging establishment is any unit, group of units, dwelling, building, or group of buildings within the same complex which is rented to guests more than three times a year. He then discussed what happens when a member redeems points for a room. The reward point member redeems his points through the central reservation center via the phone or Internet. The central reservation

center is not a public lodging establishment. The points are exchanged with the reservation center and not a hotel. He stated that the points are not exchanged with a public lodging establishment and do not have consideration from the guest. The guest then checks into the hotel, which does not receive points or any consideration from the guest. The guest provides his name and possibly a confirmation number or certificate. He stated that the central reservation system automatically reserves the room at the hotel.

Mr. Laskowski focused on the definition of “consideration.” He stated that it was not found in the statutes but is defined in the Florida Administrative Code. He stated that the Code states that rental charges or room rates are subject to tax whether received in cash, credits, property, goods, merchandise, services, or other things of value. Mr. Laskowski stated that the hotel brand does not charge a rental for the use of a room. The guest using points does not pay a room rate and does not exchange any property, services, or other things of value with the hotel. The industry strongly believes that the points are not a form of consideration and are not included as other things of value. The points have no value on the open market and have no redeemable monetary value. He stated that the industry’s belief had been affirmed in three Letters of Technical Advice issued by the Department of Revenue and publicly by the states of Massachusetts and Texas. He stated that the reimbursement from the fund is also not a contribution from the guest.

Mr. Laskowski then stated that, if the points are considered a form of consideration, then the points must be exchanged with the hotel and not the central reservation system. He stated that the points should be treated as a retailer’s coupon if exchanged with the hotel because the hotel does not receive any money from a third party. The hotel receives its own money back. He stated that points can only be exchanged at a brand hotel and not at hotels outside the brand.

Mr. Stranburg asked for clarification on the retailer's coupon analogy. He stated that a hotel family can have several hotel brands within it and that an individual can earn points at one hotel brand but can later redeem the points at another within the hotel family. He asked why the manufacturer's coupon analogy would not be more appropriate. Mr. Laskowski stated that the analogy was more appropriate to a retailer's coupon because the hotel actually gives the points to the guest, who can then exchange them for a room.

Mr. Laskowski addressed the imposition of tourist development tax under Florida law. He stated that the counties should be bound by the rules promulgated by the Department of Revenue. He stated that Rule 12A-1.061(3)(f), F.A.C., explicitly states that hotels are not required to collect or pay tax on rentals that are provided without consideration.

Ms. Kumbisky questioned whether tax should be imposed when there was consideration between the hotel and a third party on behalf of the guest. She stated her opinion that it should not matter who pays the money on behalf of the guest. Mr. Van Antwerp responded that he hoped that the meeting would provide a resolution to the question.

Mr. Brown reviewed the facts of a reward point program transaction and gave his opinion as to the legal basis for taxing reward point transactions. He stated that each hotel is contractually obligated to contribute a percentage of revenue that they receive from participating guests into the reward point program. The program may or may not be a separate legal entity, but he did not think that the program being a separate legal entity from the brand was relevant to the determination of tax. Points are earned by a reward point member on lodging, purchases at the hotel, or through a credit card. Tax may or may not be paid on the purchases that result in the earning of points, depending on where the purchases take place. The member decides where to use the points, which are of value to the member. Mr. Brown stated that barter transactions are

subject to tax, even if the thing being bartered does not have value in the general marketplace. When the member chooses to use points at a hotel, the hotel receives a credit or an extinguishment of debt. Mr. Brown stated his opinion that this credit or extinguishment of debt was a taxable transaction.

Mr. Brown stated that tourist development tax applied to every person who rents, leases, or lets a room for consideration, unless an exemption applies. The tax is computed on the consideration which is paid for the right of occupancy. Exemptions are strictly construed against a taxpayer. Mr. Brown cited two court cases in support of this point. He then cited Rule 12A-1.061(3), F.A.C., for the definition of “consideration,” which includes “credits” and “other things of value.” Mr. Brown also referred to the definition of “consideration” in Black’s Law Dictionary. Mr. Brown stated his opinion that reward points are things of value that are used to obtain things of value. Mr. Brown stated that the redemption of points in exchange for a room induces a contractual event. He then addressed the definition of “credit” and stated his opinion that the credit received by the hotel for the use of the room by the reward point member is a thing of value.

Mr. Brown then addressed the issue of whether the consideration was between the guest and the hotel. He stated that a clear rule would be contrary to previously issued Technical Assistance Advisements; that it would ignore the substance of the transactions; and that it would create a way for hotels to avoid payment of the tax. He stated that the reward program administrators are acting as agents for the hotels. He cited two Technical Assistance Advisements that stated that dealers include agents.

Mr. Helms asked if Mr. Brown had seen any contracts to support his assumption that an agency relationship exists between the reward program funds and the hotels. Mr. Brown

responded in the negative but stated that a business contract is not necessary to create an agency relationship. He stated that the actions of the central reservation system result in an agency relationship. Mr. Helms asked for clarification as to whom the system was acting as an agent, the hotel or the reward point member. Mr. Brown stated that a person can be a dual agent and that the hotel property receives a dual benefit. He again addressed the issue of extinguishment of debt by the hotels. He stated that numerous Internal Revenue Service cases state that an extinguishment of debt is a taxable event. He then discussed four court cases that addressed the issue of consideration.

Mr. Helms requested clarification of Mr. Brown's opinion regarding a guest giving consideration to the hotel by giving up the rights to the reward points. Mr. Helms stated that the guest does not give up any rights to the hotel, but would give up his rights to the program fund. Mr. Brown responded that the impelling inducement why the hotel is willing to let people stay in the rooms is because the people have the reward points. He stated that the hotel gets money in the advocacy of the consideration.

Pending Refund Requests

Mr. William Carlos Thomas, Pinellas County Tax Collector, addressed refund requests that were being processed by his office. He stated that his office was looking for applicable accounting records so as to verify gross, exempt, and tax-free sales. He also stated that his office would like to see proof of accounting entries reducing group revenue account and restated financial records. Mr. Van Antwerp responded that the records were not an issue. He stated that most jurisdictions had difficulty with the adjustments to revenue, but that there were not usually too many adjustments.

Mr. Scott Groberski, Grant Thornton LLP, stated that his firm was working with Pinellas County and asked whether it was possible to only look at the refund claim without conducting a full audit. Ms. Sullivan answered in the negative and stated that her county would conduct a full audit. Mr. Laskowski stated his opinion that there were two issues. First, the parties would have to determine if the basis of the refund claim acceptable, and second, the tax authority would need to review the numbers. Mr. Kielbasa stated that an audit consists of more than looking at the accounting numbers. He stated that the Department of Revenue looks at the underlying franchise agreements, contracts, and business arrangements to determine taxable status and then issue a binding opinion. He contrasted that with the issuance of a Letter of Technical Advice, in which a taxpayer is free to characterize a transaction however he chooses. The letter is then based on that characterization. He stated that the result did not provide a clear picture of the deeper level of how the transaction works.

Mr. Drage asked whether the industry was basing its refund claims on the Letters of Technical Advice that had been issued. Mr. Laskowski answered in the affirmative.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON SEPTEMBER 19, 2006

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on August 4, 2006 (Vol. 32, No. 31, p. 3581). A rule development workshop was held on September 19, 2006, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida, commencing at 10:00 a.m., to allow members of the public to ask questions and make comments regarding the proposed changes to this rule chapter creating the following rule section:

PARTIES ATTENDING

For the Department
of Revenue

LARRY GREEN, Tax Law Specialist, Rules and Policy
Administrative Process
MARSHALL STRANBURG, Deputy General Counsel,
Office of the General Counsel
GARY GRAY, Revenue Program Administrator, Technical
Assistance and Dispute Resolution
ERIC PEATE, Senior Attorney, Technical Assistance and
Dispute Resolution

For the Public

RITA DUNNE, Intercontinental Hotels Group
JIM ERVIN, Holland & Knight
ALEX LASKOWSKI, Grant Thornton
DAVE LEIFER, Intercontinental Hotels Group
CLAUDIA RILEA, Orange County Comptroller's Office
FRANK SCHNEIDER, Osceola County
SUE SINQUEFIELD, Manatee County
ERIN SULLIVAN, Pinellas County Tax Collector's Office
TERRY WELKER, Menna Development & Management,
Inc.
SAMER ZELOF, Marriott International

WRITTEN COMMENTS

LAURA L. FLOYD, Marriott International, Inc.
TED HARMS, Hilton Sandestin Beach
MARTHA O. HAYNIE, Comptroller, Orange County,
Florida
DIANE NELSON, Pinellas County Tax Collector
GRANT THORNTON LLP

*Proposed Subsection (2) of Proposed Rule 12A-1.0615, F.A.C., Whether Points Redeemed by
Hotel Guests Have Intrinsic Taxable Value*

Ms. Diane Nelson, Pinellas County Tax Collector, submitted written comments, dated October 16, 2006, stating that it is her position that reward points submitted to a hotel have a taxable value and there is no duplication or pyramiding of tax when imposing tax on both the redemption of points by a customer for a room and reimbursements received by a hotel from a program operator. Ms. Nelson states that sections 212.03 and 212.12, F.S., are currently in

harmony and that “it is clear that the Legislature intended that the value paid, exchanged, or surrendered by the hotel guest. . . , whether it is cash or in kind value, be the amount subject to tax.” Ms. Nelson states that tax is computed on the total consideration paid for the right of occupancy and makes no distinction between cash and in-kind payments. In addition, Rule 12A-1.061(1), F.A.C., states that tax is paid on the total rental charge with no deductions. Ms. Nelson states that she is in agreement that a room provided for no consideration is not a taxable transaction, but argues that the redemption by a guest of reward points constitutes consideration. Ms. Nelson states, “The hotel is not giving the guest a ‘free room.’ There is an exchange of value, points for a room. If the reward points had no value then there would be no reason to obtain the points. Basically, it boils down to the fact that the reward points have a monetary value and taxes should be collected from the guest on the value of the points or certificate.”

Grant Thornton LLP submitted written comments, received on October 23, 2006, stating its position that reward points submitted by a hotel guest to a hotel do not have a taxable value. It quoted section 212.03(4), F.S., which states in part that “[N]o tax shall be imposed upon rooms provided guests when there is no consideration involved between the guest and the public lodging establishment.” The written comments argue that, “The reimbursement from the rewards program to the hotel can be viewed as the hotels paying themselves back with funds they previously contributed to the rewards program. Those funds (contributions) are paid based on a percentage of the room rate that was previously taxed by a hotel. Pursuant to Florida law prohibiting double taxation, Florida counties should not impose tax on the redemption of [r]eward [p]oints. This was the determination in the Senate and Finance Committee’s Report that any reimbursements that do not exceed the amount the hotel contributes to the program should not be subject to tax. This determination is similar to the Department’s rules on calculating the

communication services tax for hotel owners. The tax paid on the hotel's sales tax return is not based on gross receipts. It is based on the hotel's profit from guest calls since tax has been previously paid to the provider on the cost of calls."

Grant Thornton LLP's written comments go on to state that points earned from a participating hotel and redeemed in Florida are not subject to sales tax under the Florida resale exemption. The transaction is described as follows:

Under a Hotel Rewards Program, the guest receives Reward Points for a paid stay. The points are included in the price of the room. The amount of points earned is shown right on the folio the guest receives upon checkout. Some programs may include a statement that the member's account has been credited for the paid stay rather than the actual points earned. Hence, with each paid stay at a participating hotel, a guest earns a fraction of a complimentary room or upgrade. Points received from participating partners (i.e., financial institutions, airlines, rental car companies, etc.) and redeemed would not fall under the resale exemption. The points would be taxable upon redemption and treated as a gift certificate. Points earned at a participating hotel and redeemed at a hotel in the State of Florida would not be subject to tax pursuant to the Florida resale certificate.

Finally, Grant Thornton LLP points out that holding that reward points redeemed by a guest have no value would be in accord with the findings of several other states.

No change to Subsection (2)

The use of reward points by a customer in exchange for a room does not have a taxable value and no tax is due from a customer.

Proposed Subsection (3) of Proposed Rule 12A-1.0615, F.A.C., Accounting Period and Reporting of tax

Mr. Ted Harms, Hilton Sandestin Beach, submitted written comments, dated August 16, 2006, requesting that an annual basis be used to determine when tax is due on reward point redemptions. In the event that an annual accounting period was not possible, Mr. Harms requested that reward point program participants be allowed to deduct all contributions made to a

reward point program from sales tax due and that all reward point program reimbursements be reported as taxable sales.

Ms. Laura L. Floyd, Marriott International, Inc., submitted written comments, dated October 18, 2006, agreeing that a comparison of reward point contributions and redemptions is a reasonable compromise, provided that an annual accounting period is used. Ms. Floyd stated her opinion that the tax due on reward point reimbursements should not be calculated on a monthly or other non-annual basis, as this would not reflect the nature of the reward point programs or the relationship between the programs and the participating hotels. Ms. Floyd requested that, to the extent that tax must be applied on a monthly basis, the taxable reimbursements be calculated for the prior fiscal or calendar year and applied to each month in the subsequent year. Ms. Floyd also stated that a reasonable method for an annual “true-up” could be determined and applied, if needed.

Ms. Martha O. Haynie, Comptroller, Orange County, Florida, submitted written comments, dated October 20, 2006, stating her opinion that each dealer be required to remit any tax due on reward point reimbursements on a monthly basis.

Grant Thornton LLP submitted written comments, received on October 23, 2006, proposing that the term “accounting period” be defined as the 12-month period ending with the last month of the hotel’s accounting year, so as to reduce the frequency and complexity of the taxable reimbursement calculation. If the Department determines that a 12-month period ending December 31 is preferable, it has no objections. It also stated that the use of the taxable percentage calculated from the prior calendar year’s contribution and reimbursement amounts would be applied to the monthly reimbursement amounts to arrive at a taxable base. The letter stated that this approach would work best for hotels, hotel companies, state and counties.

Change to Subsection (3)

Subsection (3) is revised to define "accounting period" as a calendar year.

Proposed Subsection (3) of Proposed Rule 12A-1.0615, F.A.C., Calculation of Tax

Ms. Martha O. Haynie submitted written comments detailing the formula she proposed using to calculate the taxable reimbursements. Ms. Haynie requested that language be added to the rule stating that the percentage used to determine taxable redemptions must be recalculated annually in January. The formula was set out as follows:

* * *

The estimation percentage is calculated as follows:

Percentage of Prior Year Actual Taxable Redemptions *equals* (Total Actual Prior Year Redemptions *minus* Total Actual Prior Year Contributions) *divided by* Total Actual Prior Year Redemptions

or

$$P = \frac{(r - c)}{r}$$

Where: P = percentage of prior year actual taxable redemptions

r = total actual prior year redemptions

c = total actual prior year contributions

To estimate taxable redemptions reported in the current month, P as calculated above, is multiplied by actual monthly redemptions in the current year as follows:

Estimated Taxable Redemptions for Month_x of the Current Year *equals* Percentage of Prior Year Actual Taxable Redemptions *times* Actual Redemptions in Month_x of the current year

or

$$M_x = P * R_x$$

Where: M_x = estimated taxable redemptions for month _x of the current year

P = percentage of prior year actual taxable redemptions

R_x = actual redemptions in month _x of the current year

_x = 1 through 12, representing the months January through December of the current year, respectively.

If P is less than or equal to 0%, then no tax is due and no refund of tax is owed in any month of the current year.

The current month estimate of taxable redemptions, M_x , is the amount reported on the current TDT return and TDT is to be remitted on this amount.

* * *

Definitions of Terms

r = total prior year redemptions

c = total prior year contributions

x = 1 through 12, representing the months January through December of the current year, respectively

P = percentage of prior year actual taxable redemptions

R_x = actual redemptions in month x of the current year

M_x = monthly estimated taxable redemptions for month x of the current year

Formulas

P = Percentage of Prior Year Actual Taxable Redemptions = $\frac{r - c}{r}$

M_x = Monthly Estimated Taxable Redemptions for Month x of the Current Year
= P times R_x

Change to Subsection (3)

Subsection (3) was revised to provide that taxable reimbursements are to be calculated using the prior year's total reimbursements and contributions. The contributions are subtracted from the reimbursements and the resulting figure is divided by the total reimbursements. The resulting percentage is applied to the total reimbursements in the current reporting period to determine the taxable base. The percentage is required to be recalculated each January.

Proposed Additions to Proposed Rule 12A-1.0615, F.A.C., Sharing of Reward Point Transactions, Audit Requirements, Books and Records

Ms. Martha O. Haynie submitted written comments stating, "None of the participating dealers in a reward point program may share reward point transaction gains, losses, accounting entries of any type or otherwise combine return data with each other. Each dealer shall be required to report, account for and remit [tourist development tax] due from any revenue, including reward points consideration, in accordance with this Rule, as a separate dealer and reporting entity." Ms. Haynie further stated, "Each dealer shall be required to maintain complete, adequate, and sufficient books and records in accordance with Florida Statutes, county

ordinances and [the] Florida Administrative Code including, but not limited to, room folios and those records generally kept in the ordinary course of business that support their regular [tourist development tax] returns and show all reward points redeemed for, and in consideration of, the right to stay. Each dealer shall also be required to keep complete, adequate, and sufficient books and records in accordance with Florida Statutes, county ordinances and [the] Florida Administrative Code including, but not limited to, those records showing any and all reward point reimbursements, contributions, credits, payments, debt forgiveness, consideration of any type whatsoever, and liabilities related to reward point transactions between the dealer and both the central reward point fund and the entity responsible for administering the reward point program for the right to lodging pursuant to the dealer's reward points program. Audit of reward point transactions shall be handled in the same manner as transient rental transactions subject to taxation under Section 212.03, F[.]S[.], and Section 125.0104, F[.]S."

Additions to Paragraphs (3)(a) and (e)

"Hotel" is defined to mean a single operation at a specific location and tax due must be calculated on by each hotel. Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.

Addition of New Subsection (4)

A hotel must maintain records received from or sent to the central program fund indicating the reimbursements and the contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage of the required records will be sufficient compliance with these provisions.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.0615, F.A.C.:

Proposed Subsection (2) of Proposed Rule 12A-1.0615, F.A.C., Whether Points Redeemed by Hotel Guest Have Intrinsic Taxable Value

Ms. Erin Sullivan, Pinellas County, questioned whether the points have value. She stated that her county believed the points did have value and that tax should be collected when a

program member exchanged points for an accommodation. She asked if that issue had already been decided. Mr. Marshall Stranburg, Department of Revenue, stated that it had not been decided but that the rule draft indicated that the Department was not headed in that direction. He requested her to submit her concerns in written form.

Mr. Jim Ervin, Holland & Knight, stated that most, if not all, of the industry agreed with the portion of the rule that concludes that there is no taxable transaction between the hotel and a reward point member. He stated that everyone did not necessarily agree with the taxability of redemptions less contributions, but that most companies believed it was a reasonable compromise.

Mr. Alex Laskowski, Grant Thornton LLP, stated that the issue arose in many jurisdictions and that most had chosen a redemption-to-contribution comparison method. He stated his agreement with the non-taxability of the transaction between the hotel and the reward point member.

Mr. Ervin commented that the Department had taken the position in informal rulings that the transactions between hotels and reward point members were not taxable. He stated that this element of the rule was not new and the rule did not represent any change in the law. He stated his opinion that applying the rule retroactively would not be inconsistent with the law or inconsistent with prior positions taken by the Department. Mr. Stranburg responded that the comment was noted.

No change to Subsection (2)

The use of reward points by a customer in exchange for a room does not have a taxable value and no tax is due from a customer.

Proposed Subsection (3) of Proposed Rule 12A-1.0615, F.A.C., Accounting Period; Calculation and Reporting of Tax

Ms. Claudia Rilea, Orange County, asked for confirmation that whatever transactions

occurred during a calendar month will be reported in the following calendar month. Mr. Eric Peate, Department of Revenue, responded that the rule uses the term “accounting period.” He then stated that the rule was meant to be practical and reasonable, and that the Department was seeking input from the audience on the meaning of “accounting period.” Ms. Rilea responded that reporting transactions from a particular month in the following month was the method used for reporting “regular” transient taxes and asked if the same basis would be used for the reporting of taxable reward point reimbursements. Mr. Stranburg reiterated that the Department was seeking feedback as to the best method for the reporting of taxable reward point reimbursements. Ms. Rilea stated that the normal method, i.e., reporting a transaction in the month following the month in which the transaction occurred, would be the preferred method. Mr. Stranburg reiterated Ms. Rilea’s statement for clarity that whatever method of accounting a reward point property uses to report its “regular” transactions should be the method used to report its reward point transactions. Ms. Rilea agreed that whatever transactions occurred in a particular month should be reported in the following month.

Mr. Stranburg reiterated the desire for input on the term “accounting period” and particularly asked whether that period should be monthly or something other than monthly. Mr. Stranburg asked Ms. Rilea if that potentially changed her comment. Ms. Rilea responded that her office’s computers cannot process quarterly transactions and that a monthly basis is the most convenient and easiest thing.

Mr. Ervin discussed the idea that taxing the excess of reimbursements over contributions addresses the assumption that tax was not paid on the dollars that generated those points. He stated his understanding of the industry’s concern regarding the cyclical and fluctuating nature of the business relating to when people earn reward points and when people spend those points. He

then stated that looking at each month separately does not provide an accurate reflection of the contribution and redemption balance, and further stated that an annual or longer basis would be more accurate. He clarified that this would be used to determine what the monthly payment would be and would not be inconsistent with a monthly reporting requirement. Mr. Laskowski also stressed the inaccuracy of looking at contributions and redemptions on a month by month basis. Mr. Terry Welker, Menna Development & Management Inc., then added his agreement that calculating the amount on a month by month basis would be difficult for the industry. In addition, Mr. Welker stated that his hotel is paid back from its franchise and is also paid back tax.

Ms. Rilea asked Mr. Welker for clarification on whether the fund reimburses his hotel for a room rate amount plus the tax due on that room. Mr. Welker confirmed that statement but further stated that it could be different with different franchises.

Ms. Rilea then asked Mr. Ervin for a further explanation on using an extended basis to calculate the taxable amount. Mr. Ervin stated that the prior year would be looked at and the difference between that year's reimbursements and contributions would be used in the current year. Ms. Rilea asked if the estimate would be updated each year. Mr. Ervin stated that the estimate could be recalculated each year or a true-up could be done at the end of the year based on actual amounts. Mr. Ervin stated that a true-up would not be unreasonable but might be a complicating factor.

Mr. Laskowski stated that some of the reward point programs would like to have some way of calculation that would allow them to remit the applicable taxes to the hotel and that a month by month calculation would make it too complex. He further stated that the industry would prefer using the prior year's totals because that would allow the program to add tax as

necessary. He stated that this would allow the reward point programs to program its computers properly once a year and would also result in fewer auditing issues. Mr. Laskowski and Ms. Rilea then proceeded to discuss the general nature of the reward points program, specifically how a view of a program statewide would result in a zero net sum amount, as compared to a hotel by hotel view, which will result in some hotels having more contributions and other hotels having more reimbursements.

Mr. Stranburg asked Ms. Rilea if she had any comments or input as to whether a true-up should be done at the end of each year, whether the taxable amount should be recalculated each year, or some combination thereof. Ms. Rilea responded that that was a point of negotiation and that her comptroller would not be opposed to either position. She stated her belief that an estimate updated yearly with no true-up would be acceptable. Mr. Stranburg asked if any other local representatives could comment on this issue.

Mr. Frank Snyder, Osceola County, stated that an annual or biannual basis would probably be more convenient for tax filers. However, requiring individual properties to have multiple filing requirements would place a burden on local jurisdictions; therefore, monthly filing was preferred. He then asked if there were any other transactional excise tax under the statutes that allowed bundling at the end of the month and netting it to determine how much tax to remit. Mr. Stranburg replied that, to the extent that you have credits and overpayments that occur in the same period as taxable transactions, you are allowed to net them against one another.

Mr. Dave Leifer, Intercontinental Hotels Group, stated that requiring reporting on more than a monthly basis would also add accounting burdens for the hotels. He stated his desire to have something that would cause the least burden to both hotels and local taxing jurisdictions.

Mr. Laskowski responded that the idea was not to require the filing of additional returns

but to report the taxable amount on a regular return or the final return of the year. Mr. Stranburg asked for clarification as to whether Mr. Laskowski meant an annual accounting and an annual reporting or an annual accounting and monthly reporting based on that accounting. Mr. Laskowski stated that the preference was for an annual accounting with a monthly reporting based on that accounting, but that he was not opposed to an end-of-year true-up. Mr. Welker stated his agreement with Mr. Laskowski's proposal.

Ms. Rilea stated that her comptroller's position was that tax would be due if redemptions exceeded contributions and that no refund would be given if contributions exceeded redemptions. Mr. Laskowski requested clarification on whether Ms. Rilea's comptroller was against an annual calculation. Ms. Rilea stated her agreement with an annual calculation. She further stated that her county's position did not reflect the position of other southern counties.

Ms. Sue Sinquefield, Manatee County, asked whether a specific accounting period would be required. Mr. Stranburg asked whether it would be easier to have a calendar year basis or a fiscal year basis. Ms. Sinquefield stated her preference for a calendar year basis. Mr. Stranburg then asked for other comments from the industry. Ms. Rilea agreed with the calendar year basis. Mr. Samer Zelof, Marriott International, stated that his employer did not currently use a calendar year basis for accounting and that it would be difficult to get the necessary data for that period. He stated that it would be easier to use a fiscal year basis. Mr. Zelof stated that Marriot used a 13-period accounting cycle. Mr. Laskowski stated that Marriot's accounting cycle would end close to December 31, and further stated his opinion that it should be agreeable to all parties if the cycle were off "a couple of days." Ms. Rilea stated that Marriot was the only dealer on a 13-month accounting cycle, and further stated that she would not have a problem if the accounting cycle was off a little as long as the dealer ended up with essentially a year.

Mr. Ervin questioned whether it mattered if the accounting cycle were done on a calendar year or a fiscal year, so long as the reporting was done monthly. Ms. Rilea responded that it would be confusing to dealers and would create errors if the accounting cycle were not specifically defined somewhere. Mr. Ervin stated his opinion that the rule would state that the percentage shall be determined using a taxpayer's prior fiscal year according to its books and records. Ms. Rilea agreed.

Mr. Laskowski stated his opinion that a calendar year would be the most practical approach, given that a reward point program may be on a different fiscal year from a participating hotel. Mr. Ervin deferred.

Additions to Paragraphs (3)(a) and (e)

"Hotel" is defined to mean a single operation at a specific location and tax due must be calculated on by each hotel. Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.

Addition of New Subsection (4)

A hotel must maintain records received from or sent to the central program fund indicating the reimbursements and the contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage of the required records will be sufficient compliance with these provisions.

Additions to Proposed Rule 12A-1.0615, F.A.C., Sharing of Reward Point Transactions; Audit Requirements, Books and Records

Ms. Rilea addressed the issue of documentation necessary in an audit. Mr. Peate requested Ms. Rilea to state her recommendations as to the documentation required. Ms. Rilea stated that she had never looked at data from the reward point program level and so could not make an informed recommendation. She stated that it needed to be documentation that would allow a thorough audit. Mr. Stranburg commented that the rule was addressing tax treatment and Ms. Rilea's concerns addressed audit procedure. Mr. Stranburg stated that it was difficult to put

audit procedures into a rule because there was a good chance of the procedures not working in all cases. Ms. Rilea responded that the parties needed to put their heads together and work something out. Mr. Stranburg then questioned whether the details to which Ms. Rilea alluded should be addressed in some form of voluntary agreement with the individual properties.

Mr. Laskowski stated that the reward point programs do not believe that they need to provide any additional information. They believe that the necessary information is already at the hotels. He stated that each hotel has an invoice showing the amount of contributions and redemptions on a cash basis. Mr. Welker agreed.

Ms. Rilea stated that her county generally asked for supporting documentation and were only given spreadsheets. She stated that the county never received contracts between the hotels and the programs or invoices. She stated her opinion as to the necessity of language in the rule requiring documentation so as to protect the local taxing authorities. Mr. Ervin responded that a lack of documentation should result in a denial of a refund. He stated his belief that the records should be available at the hotels. He further stated his concern with the idea of a compliance agreement being required of each property. He stated that he had anticipated a rule that would be generally applicable to the industry. Mr. Stranburg responded that he was merely bringing up a point for discussion.

Mr. Ervin replied that the concept of an agreement made sense, but that he hoped that the rule would not necessitate individual agreements with every hotel. He then asked if the Department foresaw amending the rule to include that concept. Mr. Stranburg stated that he was aware that not all of the parties were in agreement and that he did not know at that point what the Department might do. He stated that the Department would evaluate the information received at the workshop and any written comments and then work on a rule draft. He did not know if there

would be another workshop. Mr. Ervin asked how the Department would bring the concept to the attention of parties that may object. Mr. Stranburg stated that the present parties would probably talk to others and spread the information, and that the Department would allow interested parties to submit written comments. Mr. Ervin stated his concern that any agreement reached by the parties present at the workshop may not be agreeable to others.

Ms. Rilea and Mr. Laskowski discussed the administration of the reward point programs. Ms. Rilea sought information as to whether the programs kept track of where points were earned. Mr. Laskowski stated that he believed the programs could track such information but that it would be very expensive. He stated that the programs would prefer not to track such information. Mr. Laskowski and Mr. Stranburg then discussed how points are earned by program members.

Mr. Gary Gray, Department of Revenue, asked Mr. Laskowski various questions concerning the operation of the reward point programs. Mr. Gray asked if the points expire and Mr. Laskowski answered in the negative. Mr. Gray asked how many points never get redeemed and Mr. Laskowski responded that he did not know. Mr. Welker stated his belief that the points did expire, but Mr. Laskowski disagreed. Mr. Gray asked if anyone else knew and Ms. Rita Dunne, Intercontinental Hotels Group, stated that points did not expire under her program. Mr. Peate asked for clarification from Mr. Welker. Mr. Welker reiterated his understanding that the points would expire if not used, but stated that he could be wrong.

Ms. Siquefield asked Ms. Dunne what percentage of points was given away to vendors or employees of the program. Ms. Dunne stated that she was not familiar with that part of the program.

Ms. Rilea stated her preference for having a separate line item on the tax return for reward points transactions. She stated that the return should indicate where the tax came from,

where the figures come from, what were the current month redemptions, calculation of a percentage and then tax due. Mr. Stranburg responded that he did not know if that would be possible on the state sales tax return and asked Ms. Rilea if she would be comfortable with a backup schedule or other supporting information. Ms. Rilea responded in the affirmative so long as there was no prohibition to the local taxing jurisdictions requiring more on the local returns.

Mr. Welker stated that his company received no revenue from the redemption points and was being penalized on money that it had not received. He stated his hope that the issue was resolved soon.

Ms. Sinquefield stated that the Senate report also addressed the dot com issue. She asked if there were any plans to go forward with a rule on that issue. Mr. Stranburg stated that he did not know of any current plans. Ms. Sinquefield asked why and Mr. Stranburg responded that the dot com issue was working its way through another process. Ms. Sinquefield asked if there was litigation on that issue. Mr. Stranburg stated that what the Department was doing was not in litigation and that he could not get into much detail without getting close to confidentiality issues. He stated that other avenues were being utilized to address the issue. Ms. Sinquefield asked if the counties could get more information in a less open forum. Mr. Gray and Mr. Stranburg both stated that the counties had received the information. Ms. Sinquefield asked if the counties would continue to be updated and Mr. Stranburg replied in the affirmative.

Additions to Paragraphs (3)(a) and (e)

“Hotel” is defined to mean a single operation at a specific location and tax due must be calculated on by each hotel. Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.

Addition of New Subsection (4)

A hotel must maintain records received from or sent to the central program fund indicating the reimbursements and the contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered

by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage of the required records will be sufficient compliance with these provisions.

Retrospective Application of the Proposed Rule

Mr. Welker stated that his company had been audited and assessed by his local taxing authority. He questioned whether the resulting rule will be binding on local taxing jurisdictions.

Mr. Peate stated that the rule was a work in progress and that he anticipated more rule workshops. He stated that he could not advise Mr. Welker how to proceed with his audit.

Mr. Ervin reiterated Mr. Welker's question on whether the resulting rule will be binding on local tourist development tax authorities. Mr. Ervin also questioned whether the resulting rule will operate prospectively or retrospectively.

Mr. Peate stated that rules the Department of Revenue's rules are binding on local tourist development tax authorities. Mr. Peate further stated his understanding that the rule would be prospective. Mr. Stranburg reiterated that the rule would be prospective, absent specific authorization permitting the application of rule provisions retrospectively.

Ms. Rilea again addressed the issue of whether the rule would be prospective or retrospective. She stated that her county had a number of pending refund requests and that some dealers were continuing to pay tax on the transactions. She also stated that at least one taxpayer had stopped paying the tax several years ago. Mr. Stranburg responded that the rule would have a prospective application but that the Department was trying to work with both hotels and reward point programs to reach a fair and equitable resolution. He stated that it would be safest for properties to continue to remit the tax and file refund claims.

Ms. Siquefield asked for clarification that the rule would be prospective in nature. Mr. Stranburg responded that rules are required to be prospective unless specific guidance was

provided allowing an agency to make a rule retrospective. He stated that the Department of Revenue had been given no specific guidance and that the rule must be prospective. He stated that a Senate report addressing the issue had been available for several years. Ms. Sullivan asked if the parties should consider the date of the Senate report. Mr. Stranburg responded that it was a consideration that should be kept in mind.

Ms. Sinquefield asked if the Department had issued any refunds for reward point program transactions. Mr. Stranburg stated that it was not the appropriate place to discuss specific taxpayer claims. Ms. Rilea clarified that the question did not concern a specific taxpayer. She asked if the Department had issued refunds to any taxpayers. Mr. Stranburg responded that he was not aware of any action on any refund claim. He believed that there were some under audit but he did not know where those cases were in the audit process. He did not know if they were active or suspended.

Statutes Addressing Reward Point Programs

Mr. Ervin asked for clarification that the proposed rule represented an interpretation of a previously existing statute and that there had been no recent change in the statutes that prompted the proposed rule. Mr. Peate agreed that the proposed rule represented an interpretation of a previously existing statute and that there had been no recent change in the statutes that prompted the proposed rule.

Ms. Sinquefield asked for clarification of which statute addressed reward point programs. Mr. Peate responded that the applicable statutes are Sections 212.03 and 212.12(12), F.S. He further stated that the Department of Revenue was trying to harmonize the transient rental tax statute with the legislative intent against pyramiding.

SUMMARY OF PROPOSED CHANGES TO PROPOSED RULE 12A-1.0615, F.A.C.

- “Hotel” is defined to mean a single operation at a specific location and tax due must be calculated on by each hotel.
- The accounting period is defined as a calendar year. Taxable reimbursements are to be calculated using the prior year’s total reimbursements and contributions. The contributions are to be subtracted from the reimbursements and the resulting figure divided by the total reimbursements. The resulting percentage is then applied to the total reimbursements in the current reporting period to determine the taxable base. The percentage must be recalculated each January.
- Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.
- A hotel must maintain records received from or sent to the central program fund indicating the reimbursements and the contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage of the required records will be sufficient compliance with these provisions.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 13, 2009

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on September 25, 2009 (Vol. 35, No. 38, p. 4638). A rule development workshop was held on October 13, 2009, in Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida, to allow members of

the public to ask questions and make comments regarding the proposed changes to this rule chapter creating the following rule section:

12A-1.0615 Hotel Reward Points Programs

PARTIES ATTENDING

For the Department
of Revenue

LARRY GREEN, Tax Law Specialist, Rules and Policy
Administrative Process
TAMMY MILLER, Senior Attorney, Technical Assistance
and Dispute Resolution
MARK ZYCH, Director, Technical Assistance and Dispute
Resolution

For the Public

ALFREDO CRUZ, Representative Rehwinkel-Vasilinda
CHRISTOPHER DAWKINS, Orange County
Comptroller's Office
ARTIS DUKES, Polk County Tax Collector
JIM ERVIN, Holland & Knight
STEVEN FARBER, Pinellas County Tax Collector
BOB GOLDMAN, Madsen Goldman & Holcomb, LLP
SCOTT GROBERSKI, Grant Thornton
CHARLES JOHNSON, Marriott International
ALEX LASKOWSKI, Grant Thornton
EILEEN RAINEY, Hyatt
SARAH RICHARDSON, Pinellas County Attorney's
Office
CLAUDIA RILEA, Orange County Comptroller's Office
JIM SNYDER, Florida Association of Convention and
Visitors Bureaus
JOYCE SUNDAY, Walton County Clerk's Office
EMILY THOMAS, Liberty Partners of Florida, LLC
PATSY WILLBANKS, Okaloosa Clerk of the Circuit
Court

WRITTEN COMMENTS

MARTHA O. HAYNIE, Comptroller, Orange County,
Florida
JIM ERVIN, Holland & Knight

*Proposed Subsections (3) and (4) of Proposed Rule 12A-1.0615, F.A.C., Transactions Between a
Hotel and a Reward Points Program, and Recordkeeping*

Ms. Martha Haynie, Orange County Comptroller, submitted written comments, dated

October 9, 2009, and October 27, 2009, stating her proposed changes to subsections (3) and (4) of the proposed rule. Ms. Haynie recommended that subparagraph (3)(a)1. be amended to add language to the term “hotel,” so that the definition equates to the definition of “transient accommodations.” Ms. Haynie recommended that the definition of “contribution” in subparagraph (3)(a)3. be amended to add language clarifying that the only contributions that may be used in the annual calculation be those arising from transient rental revenue; this recommendation was removed from her second submission. Ms. Haynie recommended striking paragraph (3)(b), relating to an estimated calculation for a hotel’s first year of program participation, in its entirety. All references in other subparagraphs to the first year estimate and potential refunds arising from the estimate were also recommended to be removed. Ms. Haynie proposed that, instead of using an estimated calculation for the first year, a hotel should be required to calculate the amount due for the initial twelve months of participation at the end of that period and must remit any taxes due with the return due in the month following the end of that period. A taxpayer would also be required to file a supplemental schedule with that return that allocated what amounts were being remitted for what periods. The percentage calculated for the initial twelve months would be used to calculate the percentage applicable to any remaining months in the calendar year. The hotel would calculate the annual percentage to be used in the second full calendar year of participation in January following the first full calendar year of participation. An example was provided. Ms. Haynie recommended amending subparagraph (3)(c)2. to change “reporting period” to “calendar month.” Finally, Ms. Haynie recommended amending subsection (4) to add language clarifying that all reward point transactions must be supported by auditable records.

Mr. Jim Ervin, Holland & Knight, submitted written comments, dated October 30, 2009,

stating the response to Ms. Haynie’s recommendations on behalf of Marriott International, Hyatt Corporation, InterContinental Hotel Group, and Grant Thornton. Mr. Ervin stated that the withdrawal of the recommendation to amend the term “contribution” in subparagraph (3)(a) and the recommended amendments relating to a hotel’s first year of participation in a program were acceptable. Mr. Ervin stated that the recommendation to change “reporting period” to “calendar month” was problematic, as some companies report taxes for periods other than calendar months. He recommended no change be made to the term “reporting period.”

Change to Proposed Rule 12A-1.0615(3)(a)1., F.A.C., Definition of “Hotel”

The term “hotel” will be amended to include the requirement that it provide transient accommodations as described in Section 212.03, F.S.

Change to Proposed Rule 12A-1.0615(3)(d), F.A.C., Hotel’s Initial Year of Participation

Rule 12A-1.0615(3)(d), F.A.C., addressing the calculation of an estimate for a hotel’s initial year of participation in a reward points program, will be struck in its entirety, as will all references to estimates and anticipated amounts in a hotel’s initial year of participation. A hotel will be required to determine the percentage to be used in its first twelve months of participation in a reward points program using the actual amount of contributions and reimbursements received in that period. This calculation will be done at the end of the first twelve months, and the full amount of any tax must be remitted on the first tax return due following the end of the first twelve months. The calculation used for the first twelve months will also be used for any remaining months in the calendar year in which the calculation is made.

No change to Proposed Rule 12A-1.0615(3)(c)2., F.A.C., Reporting Period

The term “reporting period” will not be changed so that the rule adequately reflects the different accounting periods used by members of the industry.

No change to Proposed Rule 12A-1.0615(4), F.A.C., Recordkeeping

Detailed recordkeeping requirements are provided in Sections 212.13 and 213.35, F.S., and Rule Chapter 12-24, F.A.C. The recordkeeping section of the proposed rule will not be changed.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.0615, F.A.C.:

Proposed Subsection (1) of Proposed Rule 12A-1.0615, F.A.C., Definition of “Central Fund Administrators”

Ms. Sarah Richardson, Pinellas County Attorney’s Office, asked whether the rule

contained a definition of “central fund administrators.” Ms. Tammy Miller, Department of Revenue, answered in the negative. Mr. Alex Laskowski, Grant Thornton, and Mr. Charles Johnson, Marriott International, discussed the possible ways to define the term based on industry practice. Ms. Claudia Rilea, Orange County Comptroller’s Office, suggested replacing the term with “reward program administrator.” Ms. Richardson and Mr. Laskowski concurred.

Change to proposed Rule 12A-1.0615(1), F.A.C.

The term “central fund administrators” will be replaced with “reward program administrators.” The term “central reward points program fund” in sub-subparagraphs (3)(a)2. and 3., and the term “central program fund” in paragraph (4)(a) will be replaced with “reward program.”

Proposed Subsection (2) of Proposed Rule 12A-1.0615, F.A.C., Whether Reward Points Have Intrinsic Value and the Use of the Points Should Be Taxed

Ms. Joyce Sunday, Walton County Clerk’s Office, stated her opinion that hotel reward program points have intrinsic value and that a guest should be subject to tax when he exchanges points for the use of a hotel room. Ms. Patsy Willbanks, Okaloosa Clerk of the Circuit Court, Mr. Artis Dukes, Polk County Tax Collector, and Ms. Richardson agreed. This issue was raised and discussed at length in prior workshops, and the counties stating that the guest should be subject to tax on his or her use of points previously expressed the reasons for that opinion. Those reasons were again stated and discussed at this workshop.

Mr. Johnson, Ms. Willbanks, and Ms. Miller discussed whether there was an issue of double taxation when a hotel guest uses points on which tax may or may not have been previously paid. Mr. Ervin commented that there was an element of the hotel paying money to itself that needed to be examined in relation to the possible issue of double taxation.

Mr. Laskowski and Ms. Willbanks discussed how hotel guests are allowed to use their points among different chains within one reward program. Ms. Willbanks and Ms. Rilea then discussed whether guests are allowed to trade points for other items, including gift cards that

could be used at hotels outside the reward program. Mr. Johnson stated that, in the case of a guest using a gift card for a hotel room, that the use of the gift card would be taxed. Ms. Sunday and Mr. Laskowski then discussed the tax treatment of gift cards or vouchers acquired through raffles. Mr. Dukes stated that he did not see the difference between a guest using a gift card for a hotel room and a guest using points for the same room.

Mr. Laskowski stated that the discussion was addressing an area that he thought had been agreed to, despite the different opinions as to whether the use of points by a guest was taxable. He stated that he was in agreement with this section of the proposed Rule as written. Mr. Johnson, Mr. Ervin, and Ms. Rilea agreed.

No change to Proposed Rule 12A-1.0615(2), F.A.C.

The Florida Senate issued Report Number 2005-131, Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Reward Points Program, in November 2004. This report provides that “all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed.” (pg. 29)

Subsection (2) of the proposed rule will continue to provide that when a member of a hotel reward points program uses a certificate or confirmation number to use transient accommodations at no charge, no transient rental tax is to be collected from the member.

Proposed Paragraph (3)(c) of Proposed Rule 12A-1.0615, F.A.C., Comparison of Contributions to Reimbursements

Ms. Rilea stated that some participating hotels had revenue from activities other than the rental of hotel rooms. For instance, the hotel might own an on-site restaurant or gift shop. Ms. Rilea stated that these hotels could make contributions into the fund based on non-hotel room revenues. Ms. Rilea proposed that the amount of contributions used in the annual calculation should only include those amounts paid into the fund related to hotel rooms. Mr. Ervin gave his opinion that this calculation could work at a county level but would not be appropriate at the

state level, as the hotel would have collected and remitted state sales tax on all revenue, not just on hotel room revenue.

No change to Proposed Rule 12A-1.0615(3)(c), F.A.C., Comparison of Contributions to Reimbursements

The recommendation of Ms. Rilea that the term “contributions” be limited to transient accommodation activities only was removed in the written submissions provided by the Orange County Comptroller following the workshop. The definition of “contributions” will not be changed.

Proposed Paragraph (3)(d) of Proposed Rule 12A-1.0615, F.A.C., Hotel’s First Year of Participation in a Reward Program

Ms. Sunday asked whether information as to the contributions and reimbursements was available on a monthly basis. Ms. Miller stated that it was the Department’s understanding that such information was available; however, the Rule proposed determining the taxability of the excess reimbursements on an annual basis to account for fluctuations throughout the year due to tourism.

Ms. Sunday disagreed with using a formula on a monthly basis because it would only provide an estimate of gross taxable revenue. She stated that this presented a number of problems for local taxing jurisdictions. Mr. Chris Dawkins, Orange County Comptroller’s Office, stated that his county had a suggestion that would allow no calculation for the first year. Instead, the calculation to be used in year two would also be used for year one. Ms. Miller stated that the Department had considered that suggestion but chose to include the estimate calculation for a hotel’s first year of participation in a reward program. The Department felt that use of this calculation would provide counties with money up-front, instead of having to wait until the end of the year.

Mr. Johnson stated his opinion that the industry would be willing to accept a first-year estimate calculation, but he questioned the methods necessary for compliance. Mr. Johnson later

stated his preference for eliminating the first-year estimation and instead using actual numbers at the end of the calendar year. Mr. Laskowski agreed.

Ms. Rilea stated that her county's suggestion was to eliminate the estimation and to have a hotel file a supplemental schedule based on actual numbers, when those numbers were available. Mr. Laskowski questioned how the first-year numbers would apply to the following year, if a hotel opened in a month other than January. Ms. Rilea stated that she had not considered the issue but would be willing to work with the industry.

Ms. Sunday expressed concern over how the use of a supplemental schedule would work in practice. Ms. Rilea stated that her experience had shown that the books and records were not as complicated as thought and that there were only a few general ledger accounts that would be reviewed.

Change to Proposed Rule 12A-1.0615(3)(d), F.A.C., Hotel's Initial Year of Participation
Rule 12A-1.0615(3)(d), F.A.C., addressing the calculation of an estimate for a hotel's initial year of participation in a reward points program, will be struck in its entirety, as will all references to estimates and anticipated amounts in a hotel's initial year of participation. A hotel will be required to determine the percentage to be used in its first twelve months of participation in a reward points program using the actual amount of contributions and reimbursements received in that period. This calculation will be done at the end of the first twelve months, and the full amount of any tax must be remitted on the first tax return due following the end of the first twelve months. The first twelve months' calculation will also be used for any remaining months in the calendar year in which the calculation is made.

SUMMARY OF RULE DEVELOPMENT WORKSHOP
HELD ON JUNE 24, 2010

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on May 28, 2010 (Vol. 36, No. 21, p. 2422). A rule development workshop was held on June 24, 2010, in Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida, commencing at 10:00 a.m. and concluding at 11:59 a.m., to allow members of the public to ask questions and make

comments regarding the proposed changes to this rule chapter creating the following rule section:

12A-1.0615 Hotel Reward Points Programs

PARTIES ATTENDING

For the Department of Revenue

TAMMY MILLER, Senior Attorney, Technical Assistance and Dispute Resolution
MARSHALL STRANBURG, General Counsel
MARK ZYCH, Director, Technical Assistance and Dispute Resolution

For the Public

TOM BELL, Interval International
PAUL BOGDANSKI, Grant Thornton
JIM ERVIN, Holland & Knight
CHARLES JOHNSON, Marriott
SARAH RICHARDSON, Pinellas County Attorney's Office
JOYCE SUNDAY, Walton County Clerk's Office
VICKI WEBER, Hopping, Green and Sams
PATSY WILLBANKS, Okaloosa Clerk of the Circuit Court

WRITTEN COMMENTS

SARAH RICHARDSON, Pinellas County Attorney's Office

Proposed Subsections (2) and (3) of Proposed Rule 12A-1.0615, F.A.C., Transactions Between a Hotel and a Guest Using Reward Points, and Transactions Between a Hotel and a Reward Points Program

Ms. Sarah Richardon, Pinellas County Attorney's Office, submitted written comments on behalf of the Pinellas County Tax Collector, dated July 8, 2010, stating her opinion that the proposed rule creates an exemption from the transient rental tax that is not within the power of the Department of Revenue to create. Ms. Richardson states that the formula contained in the proposed rule by which hotels would determine what portion, if any, of their reward point redemptions would be subject to tax was very complicated and that the practical application of the proposed rule provisions will almost always result in an exemption from tax. Ms. Richardson

reiterated her argument, previously made at two workshops held on the proposed rule, that the reward points surrendered by a hotel guest for a hotel room constituted consideration. Ms. Richardson stated that the focus of the proposed rule is misdirected at the mathematical relationship between a hotel and a reward points program. Ms. Richardson requested that her comments made at previously workshops and Pinellas County's request for a declaratory statement on the issue addressed by the proposed rule be incorporated by reference.

No change to Subsections (2) and (3)

The Florida Senate issued Report Number 2005-131, Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program, in November 2004. This report provides that "all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed." (pg. 29)

Subsection (2) of the proposed rule will continue to provide that when a member of a hotel reward points program uses a certificate or confirmation number to use transient accommodations at no charge, no transient rental tax is to be collected from the member.

Subsection (3) of the proposed rule will continue to provide that only those reimbursements received by the hotel that exceed contributions made by the hotel will be subject to tax.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.0615, F.A.C.:

Proposed Paragraph (3)(d) of Proposed Rule 12A-1.0615, F.A.C., Hotel's First Year of Participation in a Reward Points Program

Ms. Richardson stated her concern regarding a hotel in its initial year of participation in a reward points program that could go bankrupt before the first full year was completed. Ms. Richardson gave the opinion that the current draft of the proposed rule did not contain language that would require a hotel in that situation to report and remit any tax on any reward points redemptions it received, because the proposed rule only contemplated completion of a full 12 months. Ms. Richardson suggested the inclusion of language that would require either the completion of one year or the completion of the program if fewer than 12 months.

Change to Proposed Paragraph (3)(d)

New subparagraph 5. will be added to paragraph (3)(d) to provide that a hotel that stops participating in a reward points program prior to the completion of a full twelve-month period will be required to calculate any tax due on reimbursements by using the full time period that the hotel participated in the reward points program. Any tax due will be required to be reported on the first return due following the date on which the hotel ceases participation in the reward points program.

Proposed Subsection (4) of Proposed Rule 12A-1.0615, F.A.C., Recordkeeping

Ms. Joyce Sunday, Walton County Clerk's Office, stated her concern as to how a county would conduct an audit of a hotel that participates in a reward points program. Ms. Sunday stated that she was concerned with educating the hotel industry as to reward point transactions. Mr. Charles Johnson, Marriott, stated that his company had gone through almost 30 audits with the state on this issue and had not had a problem in providing supporting documentation that showed the amount of reward points contributions and reimbursements between the hotel and the reward points program.

No change to Proposed Subsection (4)

Detailed recordkeeping requirements are provided in Sections 212.13 and 213.35, F.S., and Rule Chapter 12-24, F.A.C. The recordkeeping section of the proposed rule will not be changed.

Retrospective Application of the Proposed Rule

Mr. Bogdanski, Grant Thornton, asked how the proposed rule would affect refund claims that have been filed by companies and are currently awaiting decision. Mr. Zych, Department of Revenue, stated that the rule will be valid unless judicially or administratively proven otherwise. Mr. Bogdanski asked if the rule would apply to circumstances that took place prior to the time it was approved and became official. Mr. Zych stated that the rule would be valid as of the date it was promulgated and stated that transactions that occurred prior to that date would be examined on a case-by-case basis based on the evidence.

SUMMARY OF PROPOSED CHANGES TO PROPOSED RULE 12A-1.0615, F.A.C.

New subparagraph 5. will be added to paragraph (3)(d) to provide that a hotel that stops participating in a reward points program prior to the completion of a full twelve-month period will be required to calculate any tax due on reimbursements by using the full time period that the hotel participated in the reward points program. Any tax due will be required to be reported on the first return due following the date on which the hotel ceases participation in the reward points program.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE NO: RULE TITLE:

12A-1.0615 Hotel Reward Points Programs

PURPOSE AND EFFECT: Rule 12A-1.0615, F.A.C. (Hotel Reward Points Programs), is being created to provide for the application of Florida tax in situations involving hotel reward points programs within the transient rentals industry that reflects the findings of Report Number 2005-131, “Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program,” issued by the Senate Committee on Government Efficiency Appropriations. This rule sets forth when transient lodging accommodations provided to reward points programs members will be subjected to Florida’s taxes on those accommodations, including the state sales tax, local surtax, and any locally-imposed convention development tax, tourist development tax, tourist impact tax, and municipal resort tax. This rule also sets forth when transactions between the administrator of a hotel reward points program and the hotel participating in the program are subject to tax.

SUMMARY: The proposed creation of Rule 12A-1.0615, F.A.C. (Hotel Reward Points Programs): (1) provides that the rule will govern the taxation of transactions between hotel reward points program administrators and hotels within the program; (2) provides that no tax is to be collected from a member of a program when the member uses a certificate or confirmation number and is provided a room at no charge; (3) defines the terms “hotel,” “reimbursements,” and “contributions”; (4) provides that tax is due when a hotel receives more in reimbursements from the program fund than it paid in contributions to the program fund in the prior calendar

year; (5) provides the calculation of taxable reimbursements for a hotel's initial twelve months of participation in a program and for each calendar year subsequent to the initial year of operation, including examples of the calculations; and (6) provides the recordkeeping requirements of hotels participating in a reward points program.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A statement of estimated regulatory costs has not been prepared by the agency. Any person who wishes to provide information regarding the statement of estimated 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: 125.0104(3)(k), 125.0108(2)(e), 212.0305(3)(f), 212.12(12), 212.17(6), 212.18(2), 213.06(1) FS, Ch. 67-930, L.O.F.

LAW IMPLEMENTED: 125.0104(1)-(4), (8), (10), 125.0108, 212.03(1)-(5), (7), 212.0305, 212.054 FS, Ch. 67-930, L.O.F.

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 Sarah Wachman at (850)410-2651. 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: Tammy Miller, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)488-9669.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
CREATING RULE 12A-1.0615

12A-1.0615 Hotel Reward Points Programs.

(1) Scope.

(a) The provisions of this rule govern the taxation of transactions between program administrators of hotel reward points programs and hotels providing transient lodging accommodations that participate in these programs.

(b) For purposes of this rule, the term “transient rental tax” means the state sales tax imposed on transient rentals under Section 212.03, F.S., the discretionary sales surtax as authorized in Section 212.055, F.S., the locally-imposed tourist development tax provided for in Section 125.0104, F.S., the tourist impact tax provided for in Section 125.0108, F.S., the convention development tax in Section 212.0305, F.S., or any municipal resort tax in Chapter 67-930, L.O.F.

(2) Transactions Between a Hotel and a Guest Using Reward Points.

(a) When a member of a hotel reward points program uses a certificate or confirmation number entitling the member to transient accommodations at a participating hotel at no charge, the hotel is not required to collect transient rental tax from the member.

(b) When a member of a hotel reward points program uses a certificate or confirmation number entitling the member to transient accommodations and pays the hotel any room rate or

rental charges using any form of payment other than reward points, the member is required to pay the hotel transient rental tax on the amount of the room rate or rental charges paid using any form of payment other than reward points.

(3) Transactions between a Hotel and a Reward Points Program.

(a) For the purposes of this subsection, the following words are defined:

1. “Hotel” is used in the singular and is meant to describe a single operation, at one specific location, that provides transient accommodations as described in Section 212.03, F.S. The term “hotel” does not mean a group of affiliated hotels or a group of hotels operated by one franchisee.

2. “Reimbursements” mean money or credits received by a hotel from a reward points program fund.

3. “Contributions” mean money or credits paid by a hotel to a reward points program fund.

(b) Transient rental tax is due on a hotel’s reimbursements when the hotel receives more in reimbursements than it paid in contributions in the prior calendar year.

(c) Calculation of Taxable Reimbursements for Periods Other than a Hotel’s Initial Year of Participation.

1. Each January, a hotel must determine the percentage to be applied to reimbursements received during the subsequent calendar year using the following calculation:

Total Reimbursements Received in Prior Calendar Year - Total Contributions Paid in Prior Calendar Year

÷ Total Reimbursements Received in Prior Calendar Year

= Percentage to be Applied to Reimbursements Received in Current Calendar Year

If the resulting percentage is zero or less, then no transient rental tax is due on reimbursements received in the subsequent calendar year.

2. The full amount of reimbursements received by the hotel in the current reporting period must be multiplied by the percentage to determine the amount of reimbursements subject to transient rental tax for that reporting period.

3. Example: A hotel's total reimbursements and contributions in the preceding calendar year are \$10,000 and \$7,500, respectively. The hotel's percentage for the current calendar year will be calculated in January as $(\$10,000 - \$7,500)/\$10,000$ or 25%. If the current reporting period's reimbursements are \$1,000, the amount of reimbursements subject to tax in the current reporting period is \$250.

(d) Calculation of Taxable Reimbursements for a Hotel's Initial Twelve Months of Participation in a Reward Points Program

1. At the end of a hotel's initial twelve months of participation in a reward points program, the hotel must determine the percentage to be applied to reimbursements received during the initial twelve months of participation using the following calculation:

Total Reimbursements Received During the Initial Twelve Months - Total Annual Contributions Paid During the Initial Twelve Months

÷ Total Reimbursements Received During the Initial Twelve Months

= Percentage to be Applied to Reimbursements Received in the Initial Year

If the resulting percentage is zero or less, then no transient rental tax is due on reimbursements received in the initial twelve months of participation.

2. The full amount of reimbursements received by the hotel in the initial twelve months of participation must be multiplied by the percentage to determine the amount of reimbursements

subject to transient rental tax for the initial twelve months. The full amount of any tax due must be remitted with the hotel's first tax return due following the end of the initial twelve months of participation. The hotel must keep a supplemental schedule allocating the remittance to the appropriate reporting periods of the initial twelve months of participation in the hotel's books and records kept in the normal course of business. This schedule must be made available to the proper taxing authority upon request.

3. The percentage calculated for the initial twelve months of participation must also be used to calculate taxable reimbursements for all remaining reporting periods in the calendar year in which the calculation is made.

4. Example: A hotel begins participating in a reward points program in June 2010. In June 2011, the hotel must calculate the percentage using the total reimbursement and contribution amounts for June 2010 through May 2011. The resulting percentage must be applied to all reimbursements received from June 1, 2010, through May 31, 2011, to determine the amount of reimbursements subject to transient rental tax for that period. The hotel must report any taxable reimbursements for June 2010 through May 2011 on the hotel's first tax return due following May 2011. The hotel must also apply the June 2010 through May 2011 percentage to all reimbursements received each reporting period for the remainder of calendar year 2011. In January 2012, the hotel must recalculate the annual percentage using the total reimbursement and contribution amounts for January through December, 2011.

5. If a hotel ceases to participate in a reward points program before the completion of a full twelve month period, then the hotel must determine the percentage to be applied to reimbursements received by using the period of time that the hotel participated in the reward

points program. Any tax due must be reported on the hotel's first tax return due following the date on which the hotel ceases to participate in the reward points program.

(e) Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.

(4) Recordkeeping.

(a) A hotel must maintain records received from or sent to the program administrators indicating reimbursements and contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

(b) Electronic storage of the required records will be sufficient compliance with the provisions of this subsection.

Rulemaking Authority 125.0104(3)(k), 125.0108(2)(e), 212.0305(3)(f), 212.12(12), 212.17(6), 212.18(2), 213.06(1) FS, Ch. 67-930, L.O.F. Law Implemented 125.0104(1)-(4), (8), (10), 125.0108, 212.03(1)-(5), (7), 212.0305, 212.054 FS, Ch. 67-930, L.O.F. History-New _____.

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NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: [To be determined.]

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: [To be determined.]

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Public Meeting regarding reward points or similar discount programs was noticed in the Florida Administrative Weekly on March 26, 2004 (Vol. 30, No. 13, p. 1307). A Notice of Rule Development Workshop was noticed in the Florida Administrative Weekly on August 4, 2006 (Vol. 32, No. 31, p. 3581). A rule development workshop was held on September 19, 2006. Comments were received, and changes were made to the proposed rule text. The proposed amendments were noticed for a second rule development workshop in the Florida Administrative Weekly on September 25, 2009 (Vol. 35, No. 38, p. 4638). A rule development workshop was held on October 13, 2009. Comments were received, and changes were made to the proposed rule text. A third rule development workshop was noticed in the Florida Administrative Weekly on May 28, 2010 (Vol. 36, No. 21, p. 2422). A rule development workshop was held on June 24, 2010. Comments were received, and changes were made to the proposed rule text.