

Notice of Emergency Rule

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.: RULE TITLE:

12AER18-06 Florida Sales Tax Credit Scholarship Program

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Section 49 of Chapter 2018-6, Laws of Florida, authorizes the Department of Revenue to promulgate emergency rules to implement the provisions of the new Florida Sales Tax Credit Scholarship Program created by Sections 1 and 2 of Chapter 2018-6, Laws of Florida. Section 49 provides that conditions necessary for an emergency rule have been met. The promulgation of this emergency rule ensures that the public is notified in the most expedient and appropriate manner regarding the new program.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized the promulgation of an emergency rule to administer the provisions of Section 49 of Chapter 2018-6, Laws of Florida. Additionally, an emergency rule is the most expedient and appropriate means of notifying dealers and taxpayers of the provisions of Sections 1 and 2 of Chapter 2018-6, Laws of Florida.

SUMMARY: Emergency Rule 12AER18-06 outlines how to apply for an allocation; how to claim a credit following approval of the allocation application and donation to the organization; how to transfer an unused allocation or credit; how to report a change in the property or the lessor; how to rescind an unused allocation; and how organizations who receive donations are to report those donations to the Department, as required by statute. The rule also provides four new forms to be used in the program.

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

THE FULL TEXT OF THE EMERGENCY RULE IS:

12AER18-06 Florida Sales Tax Credit Scholarship Program.

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

(a) "Allocation" means the amount of program funds allocated by the Department to a tenant for monetary contributions to be made to an organization during a state fiscal year.

(b) "Contribution" means a monetary contribution from an eligible business to an eligible nonprofit scholarship-funding organization to be used under this program.

(c) "Credit" means an allocation for which a contribution to an organization has been made and is eligible to be taken against the state tax due under s. 212.031, F.S., by a tenant.

(d) "Dealer" means the person who is registered under Rule 12A-1.060, F.A.C., to collect the tax due on the rent or license fee from a tenant. For purposes of this program, the term "landlord" will be used to refer to the dealer.

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

(f) "Eligible business" means a person occupying, using, or entitled to the use of any property for which the rent or license fee is subject to taxation under s. 212.031, F.S. For purposes of this program, the term "tenant" will be used to refer to the eligible business.

(g) "Eligible nonprofit scholarship-funding organization" or "organization" has the same meaning as provided in s. 1002.395(2)(f), F.S.

(h) "Program" means the Florida Sales Tax Credit Scholarship Program under s. 212.099, F.S.

(i) "State fiscal year" means the annual period beginning July 1 through June 30 of the following year.

(j) "Tax credit cap" means the maximum annual tax credit amount that the Department is authorized by law to allocate.

(2) Applications for allocations.

(a) To apply for an allocation of the available program funds, a tenant must submit a Florida Sales Tax Credit Scholarship Program Application for a Credit Allocation (Form DR-117000, hereby incorporated by reference effective 07/18, available on the Department's website at www.floridarevenue.com/forms in the sales and use tax

section) to the Department. The fastest and easiest way to apply for an allocation is online at www.floridarevenue.com/taxes/sfo. Tenants may also apply by submitting a paper application as found on the Department's website.

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

1. each organization the tenant intends to support; and
2. each leased or licensed location.

(c) An application must be submitted to the Department during the state fiscal year for which the tenant is seeking an allocation.

(d) The Department will accept applications until the tax credit cap is reached, or until the end of the state fiscal year, whichever occurs first. The Department will approve allocations on a first-come, first-served basis. When funds are available, and the tenant is eligible to receive an allocation, a letter indicating the amount of allocation approved will be provided to the tenant.

(e) When the Department is not able to approve an application, a letter explaining the reason for the denial will be mailed to the tenant. The tenant may protest the denial pursuant to ss. 120.569 and 120.57, F.S. The Department will reserve the denied amount of the allocation for the tenant during the protest period.

(3) Claiming the Credit.

(a) After receiving an allocation but before seeking a credit against tax, the tenant must make a contribution directly to the organization identified in the Florida Sales Tax Credit Scholarship Program Application for a Credit Allocation (Form DR-117000). A tenant may make a single contribution or series of contributions to the organization. The total contributions may not exceed the allocation amount approved by the Department. All contributions must be made before the end of the state fiscal year during which the allocation was approved. Upon making each contribution, the organization receiving a contribution under the program will issue a certificate of contribution to the tenant. The tenant must provide copies of the approval letter issued by the Department and the certificate of contribution issued by the organization to the landlord when claiming a credit against the state tax due on the rent or license fee for the rental property.

(b) Credits may be taken under the program beginning October 1, 2018. To claim the credit, the landlord must file and pay electronically using Sales and Use Tax Return (Form DR-15, incorporated by reference in Rule 12A-1.097, F.A.C.). Landlords may not claim a credit on the shorter Sales and Use Tax Return (Form DR-15EZ, incorporated by reference in Rule 12A-1.097, F.A.C.) or on any paper tax return. A landlord authorized to file Form DR-15EZ, must contact Taxpayer Services at 850-488-6800, Monday through Friday, excluding holidays, to change the return type filed to Form DR-15 to take claim a tax credit under this program.

(c) The amount of credit claimed on a tax return is limited to the amount of contribution contained in the certificate of contribution issued by an organization. A credit may only be taken against the state sales tax due under s. 212.031, F.S., and is not allowed against any discretionary sales surtax due under ss. 212.054 and 212.055, F.S.

(d) The total rent or license fee, the tax that would otherwise be due, the surtax due, and the credit being claimed must be separately reported on Form DR-15, Sales and Use Tax Return. The credit may not be taken by netting the credit against the tax otherwise due on the return.

(e) No credit will be allowed when the tenant:

1. Fails to contribute to the designated organization under the program;
2. Claims the credit against tax due prior to the date the contribution is made;
3. Claims the credit against discretionary sales surtax due; or,
4. Makes the contribution outside the state fiscal year during which the allocation was approved.

(f) A credit may not be claimed on an amended return.

(g) Unclaimed credits are not eligible for refund, but may be carried forward up to 10 years. No application is necessary to carry forward a credit.

(4) Transfer of Unused Allocations or Credits.

(a)1. A tenant may not convey, assign, or transfer an allocation or a credit to another entity unless all assets of the taxpayer are conveyed, assigned, or transferred in the same transaction and the successor business continues the same lease with the same landlord.

2. Tenants must inform the Department of the transfer of any unused allocation or credit by sending written notice to:

Florida Department of Revenue
Revenue Accounting
P.O. Box 6609
Tallahassee, FL 32314-6609

(b) When the Department determines that the requirements to transfer an allocation or a credit are met, a letter indicating the amount of the approved allocation or credit will be provided to the tenant. When the Department is not able to approve a transfer, a letter explaining the reason for denial will be mailed to the tenant. The tenant may protest the denial pursuant to ss. 120.569 and 120.57, F.S.

(c) The Department must approve the transfer of the unused allocation or credit before the successor is eligible to claim a credit.

(5) Change of Landlord or Property.

(a) A tenant does not lose the ability to use the remaining amount of a previously approved allocation for which a credit has not been taken when:

1. the landlord collecting the tax on the property changes or the tenant moves to another property; and
2. the tenant continues to qualify for the program following the change.

(b) The eligible business is required to apply to the Department for a change to its allocation by submitting a Florida Sales Tax Credit Scholarship Program Application to Change a Credit Allocation (Form DR-117100, hereby incorporated by reference effective 07/18, available on the Department's website at www.floridarevenue.com/forms in the sales and use tax section). The application must be received and approved by the Department before a credit can be taken by the landlord on its sales tax return.

(6) Rescindment of Unused Allocations.

(a) Tenants who have not made a contribution to an organization under the program may rescind all or a portion of an unused allocation. To rescind an unused allocation, the tenant must submit a Florida Sales Tax Credit Scholarship Program Application for Rescindment of a Credit Allocation (Form DR-117200, hereby incorporated by reference effective 07/18, available on the Department's website at www.floridarevenue.com/forms in the sales and use tax section), to the Department. Applications must be received by the Department during the same state fiscal year during which the allocation was approved. The fastest and easiest way to rescind an allocation is to use the online application at www.floridarevenue.com/taxes/sfo. Tenants may also apply by submitting a paper application available on the Department's website.

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

1. The tenant has made the contribution to an organization under the program; or
2. The application was not submitted during the same state fiscal year during which the allocation was approved.

(c) When a tenant is eligible to rescind an allocation, a letter indicating the amount of allocation rescinded will be provided to the tenant. When the Department is not able to approve an application, a letter explaining the reason for the denial will be mailed to the tenant. The tenant may protest the denial pursuant to ss. 120.569 and 120.57, F.S.

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

(7) Reporting of contributions by eligible nonprofit scholarship-funding organizations.

(a) Each organization is required to report to the Department the contributions received under the program during each calendar month using a Florida Sales Tax Credit Scholarship Program - Contributions Received by an Eligible Nonprofit Scholarship-Funding Organization (Form DR-117300, hereby incorporated by reference effective 07/18, available on the Department's website at www.floridarevenue.com/forms in the sales and use tax section). The report is due to the Department on or before the 20th day of the month following the month of collection. If the 20th falls on a Saturday, Sunday, or state or federal holiday, the report must be received on the first business day following the 20th.

(b) Organizations may file Form DR-117300 electronically as provided in the form, or by submitting a paper form available at www.floridarevenue.com/forms in the sales and use tax section. When reporting electronically, the organization must include all information required by Form DR-117300.

Rulemaking Authority 212.099(10) F.S. Law Implemented 212.099, FS. History—New _____.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A
LATER TIME AND DATE IS SPECIFIED IN THE RULE.
EFFECTIVE DATE: 07/01/2018