

## Notice of Proposed Rule

### **DEPARTMENT OF REVENUE**

#### **RULE NOS.:RULE TITLES:**

- 12-25.0305 Scope of Rules
- 12-25.031 Definitions
- 12-25.033 Eligibility and Qualifications
- 12-25.035 Responsibility for Program Training, Certification Procedures, and Program Availability
- 12-25.037 Applying for Participation in the Program
- 12-25.038 Voluntary Disclosure of Liabilities for Other Taxes
- 12-25.039 Protest Procedure; Denial of a Request to Participate in the Certified Audit Program
- 12-25.041 Suspension of a Certified Audit in Progress
- 12-25.042 Withdrawal from the Certified Audit Program
- 12-25.045 A Certified Audit is Initiated by the Taxpayer but Not Completed
- 12-25.047 Development of Agreed Upon Procedures
- 12-25.048 Submission of the Certified Audit Report
- 12-25.049 Review of Certified Audit Reports
- 12-25.050 Protests

**PURPOSE AND EFFECT:** These rule changes are necessary to revise Part II of Chapter 12-25, F.A.C., in order to simplify and clarify the process for conducting a certified audit pursuant to Section 213.285, F.S.

**SUMMARY:** Amendments to Rules 12-25.0305, 12-25.041, 12-25.045, and 12-25.050, F.A.C., are intended to provide clarification of the current rule text and to conform with revisions made to other rules within Part II of Chapter 12-25. Revisions to Rules 12-25.031, 12-25.037, 12-25.047, and 12-25.048, F.A.C., resulted in substantial rewording of the rule due to simplifying the rule, combing two rules, restructuring of the rule, or all three; Rules 12-25.037 and 12-25.047, F.A.C., incorporate two existing forms which have been substantially revised, Form DR-342000 (Request to Conduct a Certified Audit) and Form DR-344000 (Certified Audit Program Pre-Audit Analysis), respectively. Rules 12-25.038 and 12-25.049, F.A.C., are proposed for repeal as these rules are obsolete. Rules 12-25.039 and 12-25.042, F.A.C., are proposed for repeal as the content of these rules were incorporated into one or more of the rules proposed for revisions. Rules 12-25.033 and 12-25.035, F.A.C., are proposed for repeal as the current rules do not meet the requirements of general applicability and are obsolete. Proposed amendments also remove the option of visiting local service centers to obtain copies of Departmental forms. Forms are currently available on the Department's website and may also be obtained by calling or writing the Department.

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

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

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

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

**RULEMAKING AUTHORITY:** 213.06(1), 213.285(7), FS.

**LAW IMPLEMENTED:** 213.285, FS.

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.**

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: : Danielle Boudreaux, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7082, email RuleComments@floridarevenue.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

12-25.0305 Scope of Rules.

The rules in Part II of this chapter implement the certified audits project authorized by Section 213.285, F.S. The rules set forth in this part are applicable to all taxes imposed by

(1) ~~Imposed by sections Sections~~ Sections 125.0104 and 125.0108, F.S., unless the tax is self-administered by a county, and

(2) ~~Imposed by chapter~~ Chapter 212, F.S.

No later than five years after the effective date of this rule, the Department will evaluate the rules in Part II of this chapter during the agency's annual rulemaking and regulatory plan review conducted pursuant to s. 120.74, F.S. to determine whether the rules remain necessary for the proper implementation of the statutes being implemented. Rules determined to be unnecessary, or that can be implemented in a more efficient or cost-effective manner, will be proposed for repeal or amendment in accordance with the procedures set forth s. 120.54, F.S.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Amended--.*

Substantial rewording of Rule 12-25.031 follows. See Florida Administrative Code for present text.

12-25.031 Definitions.

Terms defined in s. 213.285(1), F.S., apply to this Part in addition to the following definitions:

(1) "Audit Plan" means a detailed, comprehensive list of procedures to be used by a qualified practitioner to conduct a review of a participating taxpayer's books and records to determine tax compliance. The Audit Plan will be customized for the participating taxpayer.

(2) "Board" means the State of Florida Board of Accountancy.

(3) "Practitioner(s)" means the individual(s) on the certified audit engagement team who are not qualified practitioners.

(4) "Qualified audit firm" means a certified public accounting firm licensed by the Board which employs a qualified practitioner.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Amended--XX-XX-XX.*

12-25.033 Eligibility and Qualifications.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Repealed--XX-XX-XX.*

12-25.035 Responsibility for Program Training, Certification Procedures, and Program Availability.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Repealed--XX-XX-XX.*

Substantial rewording of Rule 12-25.037 follows. See Florida Administrative Code for present text.

12-25.037 Request to Conduct a Certified Audit. Applying for Participation in the Program.

(1) When a taxpayer wants to participate in the Certified Audit Program, the taxpayer must work with a qualified practitioner to complete a Request to Conduct a Certified Audit (Form DR-342000, effective XX/XX, hereby incorporated by reference, <http://www.flrules.org/Gateway/reference.asp?No=Ref-> ), and submit the request to the Department, along with any required supporting documents.

Copies of this form are available, without cost, by one of the following methods:

(a) Downloading the form from the Department's website at [floridarevenue.com/forms](http://floridarevenue.com/forms).

(b) Writing the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112.

(c) Calling the Department at 850-488-6800, Monday through Friday (excluding holidays). Persons with hearing or speech impairments may call the Florida Relay Service at 1-800-955-8770 (Voice) and 1-800-955-8771 (TTY).

(2) The Department will issue written notification to the qualified practitioner within 10 days after receiving a Request to Conduct a Certified Audit. The notification will state the request has been approved, has been denied, or is incomplete.

(3) If the Department determines a Request to Conduct a Certified Audit is incomplete, the Department will issue a letter explaining how the materials must be revised, expanded, or clarified.

(a) The qualified practitioner will be given 30 calendar days from the date the letter is issued by the Department to submit the revised documents.

(b) If the qualified practitioner does not submit the revised documents within 30 calendar days, the Request to Conduct a Certified Audit will be denied. Both the qualified practitioner and the taxpayer will be notified in writing of the denial.

(c) A qualified practitioner may submit a written request to the Department for a 15-day extension of the 30-day time period. The Department will not accept more than two consecutive written requests for a 15-day extension for the same Request to Conduct a Certified Audit.

(4) The following constitutes grounds for denial of a Request to Conduct a Certified Audit.

(a) The taxpayer has been issued a written notice of intent to audit by the Department, which is dated before the postmark of the Request to Conduct a Certified Audit.

(b) The taxpayer is currently under investigation by the Department or the Department learns the taxpayer is currently under investigation for financial impropriety by a local, state, or federal government entity. The request will also be denied if an investigation by the Department or a local, state, or federal government entity resulted in criminal conviction of the taxpayer for financial impropriety.

(c) The taxpayer has filed for bankruptcy.

(d) There are outstanding liens, warrants, or amounts due which were issued by the Department against the taxpayer. If the Department determines that unsatisfied liens, warrants, or amounts due exist, the Request to Conduct a Certified Audit will be denied. The taxpayer can remedy the reason for denial by satisfying the lien, warrant, or amounts due.

(5) If a Request to Conduct a Certified Audit is denied, the Department's written notification to the qualified practitioner will explain the specific reasons for such denial, unless

(a) an ongoing investigation would be jeopardized; or

(b) the confidentiality provisions of Section 213.053, F.S., prohibit such explanation.

(6)(a) If a qualified practitioner remedies the reasons for denial, the practitioner may request reconsideration of the denial by submitting a written request presenting additional materials facts for review by the Department to the administrator of the Certified Audit Program. The written request must be submitted within 21 calendar days after the date the Department issued the denial of the Request to Conduct a Certified Audit. The request may be mailed or faxed to the Department as follows:

United States Postal Service:  
Florida Department of Revenue  
Certified Audit Program MS 1-4600  
PO Box 5139  
Tallahassee, Florida 32314-5139

OR Overnight Mail:  
Florida Department of Revenue  
Compliance Standards Certified Audit  
2450 Shumard Oak Blvd  
Building 1-4653  
Tallahassee, Florida 32311

Fax number: 850-921-6174

(b) Within 10 days after receiving the request, the Department will issue a final notice of approval or denial to both the qualified practitioner and the taxpayer.

(c) If the qualified practitioner has received a final notice of denial, the qualified practitioner may submit a new Request to Conduct a Certified Audit.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Amended \_\_\_\_\_.*

12-25.038 Voluntary Disclosure of Liabilities for Other Taxes.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Repealed \_\_\_\_\_.*

12-25.039 Protest Procedure; Denial of a Request to Participate in the Certified Audit Program.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Repealed \_\_\_\_\_.*

12-25.041 Suspension of a Certified Audit in Progress.

(1) Approval to participate in the Certified Audit Program will be suspended or revoked by the Department based on the following criteria:

(a) Suspension:

1. The ~~Florida Board of Accountancy~~ suspends the firm license of the qualified audit firm.

2. The Board suspends the license of the qualified practitioner, unless the qualified audit firm employs another qualified practitioner who will take responsibility for the certified audit.

~~3.2.~~ The Department initiates an investigation or is notified by another local, state, or federal agency of an investigation for financial impropriety by the taxpayer subsequent to approval of participation but prior to Department approval of the subject certified audit report.

(b) Revocation:

1. The taxpayer files for bankruptcy subsequent to approval of participation but prior to Department approval of the subject certified audit report.

2. ~~The result of the investigation discussed in subparagraph (a)3.2. of this subsection~~ results in a criminal conviction of the taxpayer for financial impropriety is unfavorable to the taxpayer.

3. ~~The Florida Board of Accountancy~~ revokes the firm license of the qualified audit firm.

4. The Board revokes the license of the qualified practitioner, unless the qualified audit firm employs another qualified practitioner who will take responsibility for the certified audit.

(2) A This suspension implemented based on the criteria identified in paragraph (1)(a) will shall last for an initial period of no more than 60 calendar days. At the end of the suspension such 60 calendar day period the Department must do one of the following: either:

(a) Lift the such suspension, and authorize the qualified practitioner to continue to perform any and all certified audits;

(b) Extend the suspension an additional 30 calendar days; ~~or,~~

(c) Provide written notification to the taxpayer(s) and the qualified audit firm that the qualified audit firm has had its firm license revoked by the Board and accordingly, the Department is prohibiting the qualified audit firm from performing certified audits. In that circumstance, the taxpayer(s) has 60 calendar days to retain another qualified audit firm. Failure to retain a qualified audit firm within 60 calendar days will result in the application of the provisions of Rule 12-25.045, F.A.C.

2. Provide written notification to the taxpayer(s) and the qualified audit firm that the qualified practitioner has had their license revoked by the Board, and the Department is prohibiting the qualified practitioner from performing certified audits. In that circumstance, the taxpayer(s) has 60 calendar days to retain another qualified audit firm or to provide evidence the current qualified audit firm employs another qualified practitioner who will take responsibility for the certified audit. Failure to either retain a different qualified audit firm or to provide evidence of employment of a qualified practitioner by the current qualified audit firm within 60 calendar days will result in application of the provisions of Rule 12-25.045, F.A.C.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Amended \_\_\_\_\_.*

12-25.042 Withdrawal from the Certified Audit Program.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Repealed \_\_\_\_\_.*

12-25.045 A Certified Audit is Initiated by the Taxpayer but Not Completed.

(1) If, for whatever reason, the taxpayer's designated qualified audit firm fails to submit a completed certified audit report ~~that meets the requirements of Rule 12-25.048, F.A.C., after there has been approval of the Audit Plan, "Agreed Upon Procedures"~~ a Department auditor will complete the audit. ~~If a Department auditor completes the audit, the taxpayer will not benefit from the automatic abatement of penalty and interest granted by the Certified Audit program.~~

(2)(a) If the taxpayer withdraws from the Certified Audit Program subsequent to Department approval of participation, but prior to Department approval of the Audit Plan, the taxpayer will again be eligible for selection through the normal case selection process and will be subject to the standard audit selection criteria and procedures.

(b) If the taxpayer withdraws from the Certified Audit Program subsequent to the Department approval of the Audit Plan, the Department will conduct an audit of the taxpayer for the same audit period and taxes addressed by the Audit Plan.

(3) If the Department completes the audit, the taxpayer will not benefit from the automatic abatement of penalty and interest granted by the Certified Audit Program.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Amended \_\_\_\_\_.*

Substantial rewording of Rule 12-25.047 follows. See Florida Administrative Code for present text.

12-25.047 Development of the Audit Plan Agreed Upon Procedures.

(1) Within 30 calendar days after receipt of the Department's written notification approving the Request to Conduct a Certified Audit, the qualified practitioner must submit a proposed Audit Plan and procedures for conducting the certified audit to the Department for its review and approval.

(2) The proposed Audit Plan must include the qualified practitioner's pre-audit analysis of the participating taxpayer's business operations using a Certified Audit Program Pre-Audit Analysis (Form DR-344000, hereby incorporated by reference, effective XX/XX, <http://www.flrules.org/Gateway/reference.asp?No=Ref-> ). This pre-audit analysis is the starting point for development of a customized Audit Plan to perform the tax compliance review of the participating taxpayer. The Certified Audit Program Pre-Audit Analysis form is available, without cost, by one of the following methods.

(a) Downloading the form from the Department's website at [floridarevenue.com/forms](http://floridarevenue.com/forms).

(b) Writing the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112.

(c) Calling the Department at 850-488-6800, Monday through Friday (excluding holidays). Persons with hearing or speech impairments may call the Florida Relay Service at 1-800-955-8770 (Voice) and 1-800-955-8771 (TTY).

(3) The audit period for the Audit Plan will be a minimum of two consecutive years, unless the requesting taxpayer has been subject to Florida sales and use tax for less than two years. The audit period must begin in

(a) the month immediately after the ending month of any previous audit,

(b) the month the requesting taxpayer is subject to Florida sales and use tax if subject to the tax less than two years, or

(c) the earliest month within the statute of limitations as provided in s. 95.091, F.S.

(4) To request an extension of time to submit the proposed Audit Plan and procedures, the qualified practitioner must submit a written request to the Department containing the facts establishing reasonable cause for an extension. When the qualified practitioner has established reasonable cause for the extension, the Department will notify the qualified practitioner in writing and grant the qualified practitioner 30 additional calendar days. Reasonable cause is based on all the facts and circumstances and the verifiable showing of extraordinary circumstances as follows:

(a) Personal, family, or business crisis or emergency at a critical time or for an extended period of time that would cause a reasonable person's attention to be diverted from compiling the proposed Audit Plan and procedures;  
or

(b) Any other cause beyond the control of the qualified practitioner that would prevent a reasonably prudent practitioner from timely submitting the proposed Audit Plan and procedures to the Department.

(5) The Department will approve the proposed Audit Plan and procedures if it determines that the plan and procedures are adequate to perform the tax compliance review. Once the Department approves the Audit Plan, it will become the agreed upon procedures for conducting the certified audit.

(6) Before making any additions, deletions, or revisions to the approved Audit Plan, the qualified practitioner must submit a written request to the Department and receive written approval to amend the Audit Plan.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Amended \_\_\_\_\_.*

Substantial rewording of Rule 12-25.048 follows. See Florida Administrative Code for present text.

12-25.048 Submission of the Certified Audit Report.

(1) Within 90 days after approval of the Audit Plan, the qualified practitioner must submit the Certified Audit Report to the Department for review and approval.

(2) The Certified Audit Report must meet all the requirements established by the Audit Plan.

(3) The Department is authorized to share any of the information discussed in the Certified Audit Report with any county which, pursuant to law, self-administers the taxes imposed by Sections 125.0104(3) and (10), 125.0108(1), or 212.0305, F.S.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Amended \_\_\_\_\_.*

12-25.049 Review of Certified Audit Reports.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99, Repealed \_\_\_\_\_.*

12-25.050 Protests.

A taxpayer participating in the Certified Audit ~~Program~~ ~~program~~ has all the protest rights available to any taxpayer who is audited by the Department, as provided in Rule 12-6.003, F.A.C. If the taxpayer decides to file a protest, the taxpayer may elect to retain the qualified audit firm who performed the certified audit to represent them in the informal protest procedures governed by Section 213.21, F.S. In that circumstance, the qualified practitioner continues in the role as the auditor and remains responsible for providing the Department any additional information or performing any additional audit work requested by the Department ~~judges necessary~~ to address the protested tax issues.

*Rulemaking Authority 213.06(1), 213.285(7) FS. Law Implemented 213.285 FS. History--New 8-23-99; Amended \_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Tammy Miller

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 22, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: March 16, 2020