

Notice of Proposed Rule

DEPARTMENT OF REVENUE

RULE NOS.:RULE TITLES:

- 12-26.003 Application for Refund
- 12-26.004 Refund Approval Process
- 12-26.008 Public Use Forms
- 12-26.009 Refund/Offset Within an Audit

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12-26.003, F.A.C., is to: (1) remove obsolete provisions for obtaining a refund of tax paid prior to July 1, 1999; (2) update information on how to submit an application for refund to the Department; (3) provide that a refund claim for a corporate income/franchise tax refund may be claimed on an Amended Florida Corporate Income/Franchise Tax Return; (4) remove obsolete provisions for refunds of the emergency excise tax that was repealed; (5) remove provisions for obtaining a refund of intangible tax on obsolete Form DR-26I; (6) remove provisions regarding applications for certain sales tax refunds that are redundant of other administrative rules; (7) clarify the taxpayer's information required when applying for a tax refund; (8) update the Department's privacy notice; (9) clarify that a complete refund application includes information and documentation to enable the Department to determine the taxpayer's eligibility for a refund and the amount of the refund claim due; and (10) remove the recitation of the provisions of section 213.255, F.S., regarding a cash bond or a security bond.

The purpose of the proposed amendments to Rule 12-26.004, F.A.C., is to provide that when an applicant submits information regarding a refund application by e-mail, the e-mail submission date will be used for purposes of determining the date an application for refund is considered complete.

The purpose of the proposed amendments to Rule 12-26.008, F.A.C., is to: (1) adopt, by reference, updates to the applications for refunds; (2) adopt, by reference, two new forms that provide instructions on how to complete the application for refund and provide the information and documentation required for taxpayers to establish eligibility for a tax refund and the amount of the refund claim due for common tax refunds; (3) adopt, by reference, updates to the mutual agreement for an audit or confirmation of a tax refund claim to be performed at the taxpayer's location; (4) to adopt, by reference, a form used by taxpayers to apply for certification by the Department of Economic Opportunity for a refund of sales tax paid on the purchase of building materials, the rental of tangible personal property, and payment for pest control services used in new construction located in a rural area of opportunity; and (5) remove an obsolete form previously used to obtain a refund of intangible personal property tax.

The purpose of the proposed amendments to Rule 12-26.009, F.A.C., is to reflect the repeal of the emergency excise tax and remove provisions that are no longer necessary.

SUMMARY: The proposed amendments incorporate revisions to the rules and forms used to administer the Department's Refund Process.

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), 213.23 FS.

LAW IMPLEMENTED: 72.011, 95.091, 199.183, 199.218(5), 201.11, 202.125, 202.23, 206.41, 206.64, 206.8745, 206.97, 206.9815, 206.9875, 206.9941, 206.9942, 212.02(15)(a), (19), 212.05(1)(a)1.b., 212.06(5)(a)1., (7),

212.07(1), 212.08(2)(j), (5), (7), 212.09, 212.11(4), (5), 212.12(6)(a), (c), 212.13(1), (2), 212.12(4), 212.17(1), (2), (3), 212.183, 213.235, 213.25, 213.255, 213.34, 213.345, 215.26, 220.725, 220.727, 624.5092, 681.104 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: February 7, 2018, 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Becky Avrett at (850)617-6799. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED 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 PROPOSED RULE IS:

12-26.003 Application for Refund.

~~(1)(a) Taxes Paid On or After October 1, 1994, and Before July 1, 1999:~~

~~Except as otherwise provided by Section 213.345, F.S., the application for refund as required by Section 215.26, F.S., shall be filed with the Department within five years after the date the tax was paid, or the right to the refund is barred.~~

~~(b) Taxes Paid On or After July 1, 1999:~~

Except as otherwise provided by Section 213.345, F.S., for the tolling of the refund period, the application for refund required by Section 215.26, F.S., must be filed with the Department within three years after the date the tax was paid, or the right to the refund is barred.

(2)(a) No change.

(b) Applications for refund must be filed with the Department by submitting the completed application to the Department;

1. Online at taxapps.floridarevenue.com/Refunds/; or

2. Mailed to using the address or instructions contained within the application.

(3) Form DR-26, Application for Refund (incorporated by reference in Rule 12-26.008, F.A.C.), is the approved refund application for all taxes collected by the Department, except as follows:

(a) COMMUNICATIONS SERVICES TAX. A refund claim for communications services tax must be made directly to the dealer that collected that tax, as provided in Section 202.23, F.S. A refund claim may be made to the Department using Form ~~form~~ DR-26, Application for Refund, only under the following circumstances:

1. through 2. No change.

(b) CORPORATE INCOME TAX. Refunds claimed under Chapter 220 ~~or 221~~, F.S., must be filed with the Department on the following forms:

1. Form F-1120, Florida Corporate Income/Franchise ~~and Emergency Excise~~ Tax Return, Form or form F-1120A, Florida Corporate Short Form Income Tax Return, or Form F-1120X, Amended Florida Corporate Income/Franchise Tax Return (all forms incorporated by reference in Rule 12C-1.051, F.A.C.).

2. through 3. No change.

(c) through (d) No change.

~~(e) INTANGIBLE PERSONAL PROPERTY TAX. All refunds claimed under Chapter 199, F.A.C., must be filed with the Department on form DR-26I, Application for Refund Intangible Personal Property Tax (incorporated by reference in Rule 12-26.008, F.A.C.).~~

~~(e)(f)~~ No change.

~~(f)(g)~~ SALES AND USE TAX, DISCRETIONARY SALES SURTAX, SURCHARGES, AND FEES. A refund claimed for sales and use taxes, discretionary sales surtaxes, surcharges, and fees imposed or administered under Chapter 212, F.S., must be filed with the Department on Form ~~form~~ DR-26S, Application for Refund-Sales and Use Tax (incorporated by reference in Rule 12-26.008, F.A.C.). ~~An Application for Refund Sales and Use Tax that is~~

~~filed under the provisions of Sections 212.08(5)(g), (h), (n), (o), and (q), F.S., must contain the forms and other documentation specified in Rule 12A-1.107, F.A.C., to be deemed complete.~~

(4) Applications for refund ~~that as described herein which~~ are not properly completed will not be considered filed for the purpose of tolling the statutory provisions of Section 215.26, F.S., or for the purpose of the payment of interest under the conditions prescribed in Sections 213.235 and 213.255, F.S. The Department will ~~shall~~ notify the applicant of the incomplete application and the necessary actions, corrections, of information needed to complete it within 30 consecutive calendar days of receiving the incomplete application. For the purposes of this rule, a completed application is defined as an application which contains all of the following information:

(a) The taxpayer's current business name, and business mailing address, ~~and physical location of business, if different from the mailing address;~~

(b) 1. The taxpayer's federal taxpayer identification number, or social security number, business partner number, and/or Florida tax registration or license number, and/or audit number, if available;

2. Social security numbers are used by the Florida Department of Revenue as unique identifiers for the administration of Florida's taxes. Social security numbers obtained for tax administration purposes are confidential under sections 213.053 and 119.071, F.S., and not subject to disclosure as public records. Collection of social security numbers is authorized under state and federal law. Visit the Department's website site at www.floridarevenue.com and select "Privacy Notice" for more information regarding the state and federal law governing the collection, use, or release of social security numbers, including authorized exceptions;

(c) through (d) No change.

(e) Information and documentation that ~~which~~ will enable the Department to determine eligibility for the refund and verify the amount of the refund claim due requested. ~~This information must include all data which was required to be submitted on the original or original amended tax return associated with the refund application.~~

(f) through (h) No change.

~~(5)(a) The Department is empowered, pursuant to Section 213.255, F.S., to require that the applicant provide a cash bond or surety bond to protect the state's financial position in cases when the Department pays a refund claim before completing an audit of the claim.~~

~~(b) Section 213.255, F.S., also authorizes the Department to accept the following alternative security arrangements to the cash bond or surety bond discussed in paragraph (a):~~

~~1. An assigned time deposit; or,~~

~~2. An irrevocable letter of credit.~~

Rulemaking Authority 213.06(1) FS. Law Implemented 95.091(3), 198.29(1), 199.232(5), 202.23, 213.235, 213.255, 213.34, 213.345, 215.26, 220.725, 624.5092, 624.511, 624.518 FS. History—New 11-14-91, Amended 4-18-93, 4-18-95, 4-2-00, 10-4-01, 9-28-04,_____.

12-26.004 Refund Approval Process.

(1) through (2) No change.

(3)(a) For the purpose of implementing the 90 consecutive calendar day interest provision required pursuant to Section 213.255, F.S., and this rule, an application will be considered complete when all information or corrections requested from the applicant are received by the Department, based on the postmark date, fax date, e-mail submission date, or date of hand-delivery of such requested information.

(b) No change.

(4) No change.

Rulemaking Authority 213.06(1), 213.23 FS. Law Implemented 95.091(3), 213.235, 213.255, 213.34, 213.345, 215.26 FS. History—New 11-14-91, Amended 4-2-00, 10-4-01,_____.

12-26.008 Public Use Forms.

(1)(a) The following public use forms are used by the Department in the processing of refunds and are hereby incorporated by reference.

(b) These forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department's website at www.floridarevenue.com/forms; or, 2) calling the Department at 850-488-6800 Monday through Friday (excluding holidays); or, 3) visiting any local Department of Revenue Service Center or, 4)

writing the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112; or, 2) ~~faxing the Distribution Center at (850)922-2208; or, 3) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 4) calling the Forms Request Line during regular office hours at (800)352-3671; or, 5) downloading selected forms from the Department's Internet site stated in the parentheses (www.myflorida.com/dor).~~ Persons with hearing or speech impairments may call the Florida Relay Service at (800) 955-8770 (Voice) and (800) 955-8771 (TTY).

| Form Number | Title | Effective Date |
|-----------------------------|---|------------------|
| (2) DR-26 | Application for Refund (R. <u>06/03</u>) (http://www.flrules.org/Gateway/reference.asp?No=Ref-) | <u>09/04</u> |
| (3) DR-26I | Application for Refund Intangible Personal Property Tax (N. 06/03) | 09/04 |
| (4) DR-26S | Application for Refund-Sales and Use Tax (R. <u>01/03</u>) (http://www.flrules.org/Gateway/reference.asp?No=Ref-) | <u>09/04</u> |
| (4)(5) DR-370026 | Mutual Agreement to Audit or Verify Refund Claim (R. <u>07/02</u>) (http://www.flrules.org/Gateway/reference.asp?No=Ref-) | 09/04 |
| (5) DR-26N | Instructions – Application for Refund (http://www.flrules.org/Gateway/reference.asp?No=Ref-) | <u>01/18</u> |
| (6) DR-26SN | Instructions – Application for Refund Sales and Use Tax (http://www.flrules.org/Gateway/reference.asp?No=Ref-) | <u>01/18</u> |
| (7) RAO | Rural Areas of Opportunity Application for Certification Exempt Goods and Services Sales Tax Refund Based on s. 212.08(5)(r), F.S. (http://www.flrules.org/Gateway/reference.asp?No=Ref-) | <u>01/18</u> |

Rulemaking Authority 213.06(1) FS. Law Implemented 72.011, 199.183, ~~199.185~~, 199.218(5), 201.11, 202.125, 202.23, 206.41, 206.64, 206.8745, 206.97, 206.9815, 206.9875, 206.9941, 206.9942, 212.02(15)(a), (19), 212.05(1)(a)1.b., 212.06(5)(a)1., (7), 212.07(1), 212.08(2)(j), (5)(f), (g), (h), (q), (7), 212.09, 212.11(4), (5), 212.12(6)(a), (c), 212.13(1), (2), 212.12(4), 212.17(1), (2), (3), 212.183, 213.255(2), (3), (4), (12), 213.34, 215.26, 220.725, 220.727, 624.5092, 681.104 FS. History—New 11-14-91, Amended 4-18-93, 10-4-01, 9-28-04, _____.

12-26.009 Refund/Offset Within an Audit.

(1) through (4) No change.

~~(5) Procedures When Auditing Corporate Income Tax and Emergency Excise Tax Only—Same Audit Period:~~

~~(a) For purposes of this rule, corporate income tax and emergency excise tax are considered one tax category. Therefore, when auditing corporate income tax and emergency excise tax for the same audit period, any underpayment or overpayment found in corporate income tax during a filing period is added to or offset against any underpayment or overpayment found in emergency excise tax during the same filing period. The net result of a filing period is then carried forward and added to or offset against the net result of the following filing period(s) under audit to determine the final audit findings.~~

~~(b) Overpayments shall be applied to underpayments in the following order:~~

- ~~1. To any accrued tax;~~
- ~~2. To any accrued interest; and,~~
- ~~3. To any accrued penalty.~~

~~(c) Example: A taxpayer's corporate income tax and emergency excise tax are included on an audit for the tax periods January 1988 through December 1992. The following information is revealed on the audit:~~

| Tax Category | Period | Tax <Over> Under Paid | Interest | Cumulative Penalty | Amount |
|--------------|--------|--------------------------|----------|-----------------------|--------|
| Corporate | 12/88 | \$ 1,000.00 | \$ 0.00 | \$ 0.00 | |

| | | | | | |
|------------------|-------|------------|----------|------|--------------|
| Emergency Excise | 12/88 | <3,000.00> | 0.00 | 0.00 | \$<2,000.00> |
| Corporate | 12/89 | 500.00 | 0.00 | 0.00 | |
| Emergency Excise | 12/89 | 1,000.00 | 0.00 | 0.00 | <500.00> |
| Net Result | | | <500.00> | | |

~~The 12/88 overpayment in emergency excise tax is offset against the 12/88 underpayment in corporate income tax. The remaining overpayment is carried forward to be offset against later underpayments within the audit period. The 12/88 net overpayment is offset against the 12/89 underpayments in corporate income tax and emergency excise tax. Since the final result of the audit is an overpayment and the entire amount of the overpayment is outside the statute of limitations for refund, the remaining overpayment is barred from any additional refund or credit.~~

(6) through (8) renumbered (5) through (7) No change.

Rulemaking Authority 213.06(1) FS. Law Implemented 72.011, 95.091, 213.25, 213.34, 215.26 FS. History—New 4-18-95, 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: December 13, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: November 2, 2017