

Section II Proposed Rules

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NOS.: RULE TITLES:

12A-1.0015 Sales for Export; Sales to Nonresident
Dealers and Foreign Diplomats

12A-1.097 Public Use Forms

PURPOSE AND EFFECT: The purpose of this rulemaking is to implement the provisions of s. 212.06(5)(b), F.S., as amended by Section 18 of Chapter 2021-31, L.O.F. These legislative changes create a process by which a forwarding agent may apply to the Department for and receive a Certificate of Forwarding Agent Address; the provisions require the Department to publish a complete list of certificate holders to its website. Tangible personal property which has been imported, produced, or manufactured in Florida is not subject to tax if the tangible personal property is delivered to a forwarding agent for export and if that forwarding agent holds a Certificate of Forwarding Agent Address. Rules 12A-1.0015 and 12A-1.097, F.A.C., implement these legislative changes.

SUMMARY: The proposed amendments to Rule 12A-1.0015 outline the application process, eligibility criteria, and renewal requirements for a Florida Certificate of Forwarding Agent Address, as well recordkeeping requirements and when a forwarding agent is required to collect and remit tax. The proposed revision to Rule 12A-1.097 incorporates a new form to apply for a Florida Certificate of Forwarding Agent Address, Form DR-1FA.

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: 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.04(4), 212.0515(7), 212.0596(3), 212.06(5)(b)13., 212.07(1)(b), 212.08(5)(b)4., (n)4., (o)4., (7), 212.099(10), 212.11(5)(b), 212.12(1)(a)2., 212.17(8), 212.18(2), (3), 212.183, 213.06(1), 288.1258(4)(c), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 1002.40(16) FS.

LAW IMPLEMENTED: 119.071(5), 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 202.11(2), (3), (6), (16), (24), 202.22(3)-(6), 202.28(1), 203.01, 212.02(1), 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0506(4), (11), 212.0515, 212.054, 212.055, 212.0596, 212.05965, 212.06, 212.0606, 212.07, 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.099, 212.11, 212.12, 212.13, 212.14(2), (4), (5), 212.15(1), 212.16(1), (2), 212.18(2), (3), 212.183, 212.1832, 212.19, 212.21(3), 213.235, 213.29, 213.37, 213.755, 215.26(6), 219.07, 288.1258, 290.00677, 365.172(9), 373.41492, 376.70, 376.75, 403.718, 403.7185, 443.131, 443.1315, 443.1316, 443.171(2), 465.187, 616.260, 681.117, 1002.40(13) FS.

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

DATE AND TIME: April 22, 2022, at 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida 32399. Members of the public can also attend electronically via webinar; participants will need to register for the webinar using the following link: <https://attendee.gotowebinar.com/register/6420712921663012878>.

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: Tonya Fulford at (850)717-6799. 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: 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:

12A-1.0015 Sales for Export; Sales to Nonresident Dealers and Foreign Diplomats.

(1) Scope.

(a) Tangible personal property imported, produced, or manufactured in this state for export, as provided in Section 212.06(5)(a)1., F.S., is not subject to Florida sales tax when the importer, producer, or manufacturer delivers the property to a forwarding agent licensed exporter for export ~~outside Florida~~ or to a common carrier for shipment outside Florida, or mails the property by United States mail to a destination outside Florida. ~~This rule is intended to provide tax guidelines for the sale of tangible personal property for the purposes of export from Florida.~~

(b) No change

(2) Sales of property irrevocably committed to exportation.

(a) No change

(b) When a dealer sells tangible personal property, commits the property to the exportation process at the time of sale, and the exportation process remains continuous and unbroken until the property is exported from Florida, the dealer is not required to collect tax. The intent of the seller and the purchaser to export the property is not sufficient to establish that the property is not subject to tax in Florida. The delivery of the property to a location in Florida for subsequent export from Florida is insufficient to establish documentary evidence that the property sold was irrevocably committed to the exportation process. The following are examples of methods to commit the property to the exportation process at the time of sale:

1. through 2. No change

3. The dealer is required by the terms of the sale contract to deliver the property to a carrier, licensed customs broker, or forwarding agent for final and certain movement of the property to a destination located outside Florida.

a. through b. No change

c. The term “forwarding agent” means a person or business whose principal business activity is facilitating for compensation the export of property owned by other persons ~~regularly engaged in the business of preparing property for shipment or arranging for its shipment for compensation.~~

d. No change

(c) No change

(d)1. Any dealer who makes tax exempt sales of tangible personal property and, in good faith, accepts a valid copy of a

Florida Certificate of Forwarding Agent Address or relies on the list of designated forwarding agent addresses on the Department's website and then ships the property to the designated address on the certificate for export outside of the United States is not liable for any tax due on sales made during the effective dates of the certificate. The dealer must maintain documentation that the property was shipped or delivered by the dealer directly to the forwarding agent address.

2. If tax was not collected by a dealer on tangible personal property shipped to a designated forwarding agent address and the tangible personal property remained in Florida or if delivery to the purchaser or purchaser's agent occurred in Florida, then the forwarding agent must remit applicable tax on the tangible personal property. This subparagraph does not prohibit the forwarding agent from collecting such tax from the consumer of the tangible personal property.

(d) renumbered (e) No change

(f) (e) Regardless of the evidence maintained by the dealer to document delivery of the property to a common carrier, forwarding agent, or a licensed customs broker for shipment to a location outside Florida, or the mailing of the property by the United States mail to a location outside Florida, tax is due when the property is diverted in transit to the purchaser or the purchaser's agent or representative in Florida and such person takes possession in Florida, or when for any other reason the property is not delivered outside Florida.

(3) No change

(4) Florida Certificate of Forwarding Agent Address; Application; Eligibility.

(a) To apply for a Florida Certificate of Forwarding Agent Address, an applicant must submit a complete Application for a Florida Certificate of Forwarding Agent Address (Form DR-1FA, incorporated by reference in Rule 12A-1.097, F.A.C.), a Florida Business Tax Application (Form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.), and documentation sufficient to substantiate the applicant's eligibility for the certificate, including the applicant's most recently filed federal income tax return. An application for a certificate is complete when all information required to be submitted by Section 212.06(5)(b), F.S., the application, and this rule is provided to the Department.

(b) To receive a certificate, an applicant is required to demonstrate that:

1. The applicant's principal business activity is facilitating for compensation the export of property owned by other persons;

2. The applicant is engaged in international export; and

3. The designated address for which certification is sought is used exclusively by the applicant for receiving tangible personal property originating with a United States vendor for

export out of the United States through a continuous and unbroken exportation process.

(c) Each applicant is required to provide the following to demonstrate the business is engaged in the export of property owned by others and supported by the following information:

1.a. A copy of the applicant's federal income tax return for the preceding taxable year with NAICS code 488510; or

b. A copy of the applicant's federal income tax return for the preceding taxable year with a NAICS code consistent with the principal business activity of a forwarding agent and an explanation why the NAICS code demonstrates the applicant is a forwarding agent; or

c. An explanation as to why the business did not file a federal income tax return for the preceding taxable year and the NAICS code under which the applicant intends to file a federal income tax return.

2. A description of all business activity that occurs at each designated address submitted on the Application for a Florida Certificate of Forwarding Agent Address.

3.a. Applicants who include a copy of their federal income tax return are required to include a statement of total revenues, a statement of revenues associated with facilitating for compensation the export of property owned by other persons, and a statement of revenues associated with international export. These statements must be from the year preceding the date of application.

b. Applicants who do not include a copy of their federal income tax return are required to include a statement of total estimated revenues, a statement of estimated revenues associated with facilitating for compensation the export of property owned by other persons, and a statement of estimated revenues associated with international export.

4. Certification that

a. The tangible personal property delivered to the designated address for export originates with a United States vendor; and

b. The tangible personal property delivered to the designated address for export is irrevocably committed to export out of the United States through a continuous and unbroken exportation process; and

c. The designated address is used exclusively by the forwarding agent for such export; and

d. The principal business activity is that of a forwarding agent; and

e. The applicant is engaged in international export.

(d) When an application is approved, the applicant will be issued a Florida Certificate of Forwarding Agent Address (Form DR-14FAA), which is valid from the "Issue Date" through the "Expiration Date" as indicated on the certificate unless revoked or surrendered prior to the expiration date. After

a certificate is issued, the following information will be published on the Department's website:

1. The name of the forwarding agent's business.
2. The designated address of the forwarding agent.
3. The issue date and the expiration date provided on the certificate.

(e) When an application is incomplete, the Department will issue a letter notifying the applicant of the documentation or information that is to be provided to the Department within 30 days following the date of the notification. If an applicant fails to provide the required documentation or information and the application remains incomplete or the Department is not able to approve an application, a notice explaining the reason for the denial will be mailed to the applicant. The applicant may protest the denial pursuant to Sections 120.569 and 120.57, F.S., within 21 days after the date of the notice.

(f) Beginning July 1, 2023, each business holding a Florida Certificate of Forwarding Agent Address must submit Form DR-1FA to verify the designated address used by the forwarding agent no later than July 1 each year.

(g) Within 30 days of any material change, business holding a Florida Certificate of Forwarding Agent Address must submit an updated Form DR-1FA documenting the material change.

1. A change is considered material if the change affects the following information previously submitted by the certificate holder:

- a. Florida Business Partner Number
- b. Federal Employer Identification Number (FEIN)
- c. Legal Name of Business
- d. Contact Person, including changes to their contact information
- e. Mailing Address
- f. Business Website
- g. Designated Address(es)
- h. Description of all business activity conducted at the designated address(es)
- i. Federal Income Tax Return (if one was not included with the initial application)

2. A change is not considered material if it relates to a new federal income tax return if one was provided with the initial application; new documentation demonstrating the applicant remains engaged in international export; or changes in revenues or estimated revenues, unless the changes demonstrate that the principal business activity is no longer the facilitation for compensation the export of property owned by others.

3. The Department will notify the applicant when a material change requires submission of an updated Form DR-1.

(h) At least 30 days before the expiration date on a Certificate of Forwarding Agent Address, an application for renewal must be submitted using Form DR-1FA, along with

documentation sufficient to substantiate the applicant's eligibility for the certificate. Form DR-1 is not required to be submitted with a renewal application, unless the Department notifies the applicant. The Department will review the renewal application in the same manner as the initial application.

(i) Certificate holders must immediately notify the Department, in writing, should the business no longer meet the eligibility requirements, provided in paragraph (b), for a Florida Certificate of Forwarding Agent Address and must surrender their certificate.

1. The written notification must include the Florida business partner number, federal employer identification number (FEIN), legal name of business, a statement as to why the business no longer meets the requirements of a forwarding agent as provided in Section 212.06(5)(b), F.S., and the business is surrendering its Florida Certificate of Forwarding Agent Address.

2. The written notification is to be submitted to the Department by email at Exemptions@floridarevenue.com, by fax to 850-488-5997, or by mail to:

Account Management MS 1-5730
Florida Department of Revenue
5050 W Tennessee St
Tallahassee FL 32399-0160

(j) If at any time the Department has reason to believe that a business holding a Florida Certificate of Forwarding Agent Address is not eligible for a certificate or is otherwise not in compliance with Section 212.06(5)(b), F.S., or this rule, the certificate holder will be sent a written notice of intent to revoke the certificate stating the reasons for such revocation.

1. The Department may request information from the certificate holder regarding its business operations to demonstrate its eligibility for a certificate or its compliance with all provisions of Section 212.06(5)(b), F.S., and this rule. Failure to provide the requested information within thirty (30) days of request is grounds for revocation of the certificate.

2. The certificate holder has the right to request an administrative hearing, to be conducted in accordance with Sections 120.569 and 120.57, F.S. and Rule Chapter 28-106, F.A.C., to dispute the notice of intent to revoke the certificate. The request must be received by the Department within 30 consecutive calendar days after the date of the notice. The Department's notice of intent to revoke the certificate will become final if no timely request for a hearing is received or if, following an administrative hearing, the Department issues a final order revoking the certificate.

(k) An entity whose Florida Certificate of Forwarding Agent Address has expired, been surrendered, or revoked by the Department is prohibited from extending a copy of its certificate to a selling dealer. Upon surrender, revocation, or expiration of a certificate without renewal, the forwarding

agent's information will be removed from the Department's online list of forwarding agents holding a valid Florida Certificate of Forwarding Agent Address.

(4) renumbered (5) No change

(6) ~~(5)~~ Recordkeeping requirements.

(a) 1. Selling dealers must maintain copies of internal delivery orders and supporting documentation, trip tickets, truck log records, United States Postal Service parcel post receipts, bills of lading, receipts from common carriers, export declarations, customs documents, receipts from licensed customs brokers, statements signed by a customs officer, declarations by nonresident dealers, copies of tax-exemption cards issued by the United States Department of State, exemption certificates, and other documentation required under the provisions of this rule until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

2. ~~(b)~~ Electronic storage by the selling dealer of the required certificates and other documentation ~~through use of imaging, microfiche, or other electronic storage media~~ will be sufficient compliance with the provisions of this subsection.

(b) 1. Forwarding agents must maintain copies of sales invoices or receipts between the vendor and the consumer when provided by the vendor or export documentation evidencing the value of the purchase consistent with the federal Export Administration Regulations, 15 C.F.R. parts 730-774; copies of federal income tax returns evidencing the forwarding agent's NAICS principal business activity code; copies of invoices or other documentation evidencing shipment to the forwarding agent; invoices between the forwarding agent and the consumer or other documentation evidencing the ship-to destination outside the United States; invoices for foreign postal or transportation services; bills of lading; and any other export documentation.

2. These records must be kept in an electronic format and made available to the Department at reasonable times and by reasonable means.

Rulemaking Authority 212.06(5)(b)13., 212.18(2), 213.06(1) FS. Law Implemented 212.02(20), 212.05(1), 212.06(1), (2), (5)~~(a)1.~~, ~~(b)~~, 212.12(9), 212.13(1), (2), (3), (4), 212.21(3), 213.37 FS. History—New 6-12-03, XX-XX-XX.

12A-1.097 Public Use Forms.

(1) No change

Form Number	Title	Effective Date
(2)(a) through (f)	No change	

(g) DR-1FA	Application for a Florida Certificate of Forwarding Agent Address (http://www.flrules.org/Gateway/reference.asp?No=Ref-_____)	<u>XX/X</u> <u>X</u>
(3) through (24)	No change	

Rulemaking Authority 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.0596(3), 212.06(5)(b)13., 212.07(1)(b), 212.08(5)(b)4., (n)4., (o)4., (7), 212.099(10), 212.11(5)(b), 212.12(1)(a)2., 212.18(2), (3), 212.183, 213.06(1), 288.1258(4)(c), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2), ~~(7)~~, 1002.40(16) FS. Law Implemented ~~92.525(1)(b)~~, 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 202.11(2), (3), (6), (16), (24), 202.22(3)-(6), 202.28(1), 203.01, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055, 212.0596, 212.05965, 212.06, 212.0606, 212.07(1), (8), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.099, 212.11(1), (4), (5), 212.12(1), (2), (9), (13), 212.14(2), (4), (5), 212.18(2), (3), 212.183, 212.1832, 213.235(1), (2), 213.29, 213.37, 213.755, 215.26(6), 219.07, 288.1258, 290.00677, 365.172(9), 376.70(2), 376.75(2), 403.718, 403.7185(3), 443.131, 443.1315, 443.1316, 443.171(2), 1002.40(13) 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, 1-12-11, 1-25-12, 1-17-13, 5-9-13, 1-20-14, 1-19-15, 1-11-16, 4-5-16, 1-10-17, 2-9-17, 1-17-18, 4-16-18, 1-8-19, 10-28-19, 12-12-19, 3-25-20, 12-31-20, XX-XX-XX.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Danielle Boudreaux

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 29, 2022

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: November 1, 2021

[REDACTED]