



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

November 9, 2023

Tonya Fulford
Operations Review Specialist
Florida Department of Revenue
2450 Shumard Oaks Blvd., Rm 2600
Tallahassee, FL 32399

Dear Tonya Fulford:

Your adoption package for Rule 12A-1.070, F.A.C. was received, electronically, by the Florida Department of State, Administrative Code and Register at 1:18 p.m. on November 9, 2023. After review, it appears that the package meets statutory requirements and those of Rule 1-1.010, F.A.C. and is deemed filed for adoption at the time received, as indicated above. The effective date is December 1, 2023.

Sincerely,

Anya C. Owens
Administrative Code and Register Director

ACO/al

Leijon, Alexandra

From: Tonya Fulford <Tonya.Fulford@floridarevenue.com>
Sent: Thursday, November 9, 2023 1:18 PM
To: RuleAdoptions
Cc: Martha Gregory; Brinton Hevey; Tammy Miller; Janet Young
Subject: Department of Revenue Rule Certification - 12A-1.070
Attachments: 12A-1.070_Rule Certification Package_110923.pdf; Rule Language_12A-1.070_Final_Rule Text.docx
Importance: High

EMAIL RECEIVED FROM EXTERNAL SOURCE

The attachments/links in this message have been scanned by Proofpoint.

Good afternoon,

Attached are the rule certification packet for Rule 12A-1.070 and the final language in word format.

Edits made from package sent this morning:

- 1) Rule Certification Form updated with an effective date of December 1, 2023 and resigned.
- 2) Added "PROPOSED EFFECTIVE DATE: December 1, 2023" to the final language, above Rulemaking Authority

Please let me know if you have any questions.

Thank you,



Tonya L. Fulford
Operations Review Specialist
Technical Assistance
Florida Department of Revenue
(850) 717-6799
tonya.fulford@floridarevenue.com
[unsecure]

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but rather that the email has been sent unencrypted in clear text form. Revenue does provide secure email exchange. Please contact us if you need to exchange confidential information electronically.

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Senator Erin Grall
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Senator Darryl Ervin Rouson
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Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.



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THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

CERTIFICATION

Department: Department of Revenue
Agency: Sales and Use Tax
Rule No(s): 12A-1.070
File Control No: 191819

As required by subparagraph 120.54(3)(e)4 F.S., the Joint Administrative Procedures Committee hereby certifies that:

- There were no material and timely written comments or written inquiries made on behalf of the committee regarding the above listed rule; or
The adopting agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee regarding the above listed rules; or
The adopting agency has not responded in writing to all material and timely written comments or written inquiries made on behalf of the Committee regarding the above listed rules.

Certification Date: 11/9/2023

This certification expires after: 11/16/2023

Certifying Attorney: Marjorie Holladay

NOTE:

- The above certified rules include materials incorporated by reference.
The above certified rules do not include materials incorporated by reference.



Florida Department of Revenue
Office of the Executive Director

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

November 9, 2023

Ms. Anya Owens, Chief
Florida Department of State
R.A. Gray Building, Mail Station 22
500 S. Bronough Street
Tallahassee, Florida 32399-0250

Re: Certification of Department of Revenue Rule

Dear Ms. Owens:

The following Department of Revenue Rule is presented for certification:

12A-1.070 Leases and Licenses of Real Property; Storage of Boats and Aircraft

The following persons may be contacted regarding this rule certification:

Martha Gregory	717-6041	martha.gregory@floridarevenue.com
Brinton Hevey	717-7754	brinton.hevey@floridarevenue.com

Florida Department of Revenue
Building One, Room 2600
2450 Shumard Oak Blvd.
Tallahassee, Florida 32399-0100

Sincerely,

Janet Young
Agency Rules Coordinator

Attachments

CERTIFICATION OF DEPARTMENT OF REVENUE
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

- (1) That all statutory rulemaking requirements of chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and
- (2) That there is no administrative determination under section 120.56(2), F.S., pending on any rule covered by this certification; and
- (3) All rules covered by this certification are filed within the prescribed time limitations of section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by section 120.54(3)(a), F.S.; and
- (a) Are filed not more than 90 days after the notice; or
- (b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or
- (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or
- (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or
- (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or
- (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or
- (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or
- (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or
- (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the ombudsman in the Executive Office of the Governor.

The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

12A-1.070

Under the provision of section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective December 1, 2023 Date:
(month) (day) (year)



Signature, Person Authorized to Certify Rules

General Counsel

Title

2

Number of Pages Certified

CERTIFICATION OF DEPARTMENT OF STATE

DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No(s).

Rules covered by this certification:

Rule No(s).

12A-1.070



Signature of Agency Head

Executive Director

Title

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULE 12A-1.070

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12A-1.070, F.A.C. (Leases and Licenses of Real Property; Storage of Boats and Aircraft), update the state sales tax rate from 5.5% to 4.5%, effective December 1, 2023, on the rental, lease, or license to use, occupy, or enter upon any real property.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendments to Rule 12A-1.070, F.A.C. (Leases and Licenses of Real Property; Storage of Boats and Aircraft), are necessary to incorporate the tax rate reduction, effective December 1, 2023, on the rental, lease, or license to use real property as provided in s. 22, Ch. 2023-157, 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 WORKSHOP

July 18, 2023

A Notice of Proposed Rule Development was published in the *Florida Administrative Register* on June 30, 2023 (Vol. 49, No. 127, pp. 2354-2355), to advise the public of the proposed changes to Rule 12A-1.070, F.A.C., and to provide that, if requested in writing, a rule development workshop would be held on July 18, 2023. One request was received, and a workshop was held on July 18, 2023. No comments regarding the substance of the rule were received. No written comments were received by the Department.

SUMMARY OF PUBLIC MEETING

September 18, 2023

The Governor and Cabinet, sitting as head of the Department of Revenue, met on September 18, 2023, and approved the publication of the Notice of Proposed Rule for Rule 12A-1.070, F.A.C., as well as approval to file and certify the rule with the Secretary of State pursuant to s. 120.54(3)(e)1., F.S., if the substance of the proposed rule remains unchanged upon reaching the date applicable to filing for final adoption pursuant to s. 120.54(3)(e)2., F.S. A notice for the public meeting was published in the *Florida Administrative Register* on September 12, 2023 (Vol. 49, No. 177).

SUMMARY OF RULE HEARING

October 12, 2023

A Notice of Proposed Rule was published in the *Florida Administrative Register* on September 19, 2023 (Vol. 49, No. 182), to advise the public of the proposed changes to Rule 12A-1.070, F.A.C., and to provide that, if requested in writing, a rule hearing would be held on October 12, 2023. No request was received, and no hearing was held. No written comments were received by the Department.

A written comment of a technical nature was received from the Joint Administrative Procedures Committee. The certified rule includes the technical change.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULE 12A-1.070

12A-1.070 Leases and Licenses of Real Property; Storage of Boats and Aircraft.

(1) through (3) No change.

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

(e) Utility charges paid by a tenant to the lessor for the privilege or right to use or occupy real property are taxable, unless the lessor has paid the sales tax to the utility company on such utilities consumed by the tenant, and the utilities billed by the lessor to the tenant are separately stated on the lessor’s invoice to the tenant at the same or lower price as that billed by the utility company to the lessor.

1. Example: Landlord owns a building with 5 offices and common areas. All offices are the same size. Landlord uses one office and leases the other four. The lease agreement provides that the utility charges are “additional rent” and failure to pay such utility charges when required will cause the lease to terminate. All offices use approximately the same amount of utilities. Utility services are sold by City Utilities to Landlord. Landlord’s total utility bill is \$1,900. Of that total, \$150 was non-taxable water, garbage, and sewage charges. Landlord charges each tenant \$2,000 rent and 1/5 of Landlord’s total utility bill with no mark-up. Tenant owes tax on the rent and on his portion of the utility charges not taxed to Landlord. Therefore, the invoice to the tenant for the month should read:

Rent	\$2,000.00
Tenant’s one-fifth share of charges not taxed to Landlord (\$150 * 20%)	30.00
Total subject to sales tax	\$2,030.00
Florida (<u>4.5%</u> 5.5%) sales tax	<u>91.35</u> 111.65
Reimbursement for one-fifth share of utilities on which tax was paid by Landlord (\$1,900 - \$150 * 20%)	<u>350.00</u>
Total Amount Due	<u>\$2,471.35</u> \$2,491.65

2. Example: Same facts as above, except Landlord marks up Tenants' share of the total of City Utilities' service bill by 10 percent. Thus, each tenant's one-fifth share of utilities would be \$418.00, instead of \$380.00. Again, if Landlord separately states the utility charges on the tenant's invoice, Landlord should compute the tax as follows:

Rent	\$2,000.00
Tenant's one-fifth share of charges not taxed (total utilities \$418, less utilities on which Landlord paid tax, \$350.00)	68.00
Total subject to sales tax	\$2,068.00
Florida (4.5% <u>5.5%</u>) sales tax	<u>93.06</u> 113.74
Reimbursement for one-fifth share of utilities on which tax was paid by Landlord	<u>350.00</u>
Total Amount Due	<u>\$2,511.06</u> \$2,531.74

(f) through (g) No change.

(5) through (7) No change.

(8) When a tenant (lessee) or other person occupying, using, or entitled to use any real property (licensee) sublets or assigns some portion of the leased or licensed property, he may take credit on a pro rata basis for the tax that he paid to his landlord or other such person on the space that he subleases or assigns. Proration shall be computed on square footage or some other basis acceptable to the Executive Director or the Executive Director's designee in the responsible program. For example, Tenant leases 200 square feet of floor space for \$400.00 and pays Landlord ~~\$18.00~~ \$22.00 rental tax. Tenant subleases 100 square feet, or one half, of the space to Subtenant for \$300.00 and collects ~~\$13.50~~ \$16.50 tax which he remits to the State, less a credit of ~~\$9.00~~ \$11.00 for tax that he paid to his landlord on the space that he subleased to Subtenant. (One half of \$400.00 is \$200.00 and ~~4.5~~ 5.5 percent of this amount is \$9.00 ~~\$11.00~~.)

(9) through (23) No change.

PROPOSED EFFECTIVE DATE: December 1, 2023

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 212.03(6), 212.031 FS. History--New 10-7-68, Amended 2-8-69, 10-7-69, 6-16-72, 9-26-77, 10-18-78, 12-31-81, 7-20-82, Formerly 12A-1.70, Amended 1-2-89, 3-27-95, 7-17-95, 1-17-18, 1-8-19, 12-12-19, 6-14-22, 12-1-23.