

**DEPARTMENT OF REVENUE****Sales and Use Tax****RULE NOS.: RULE TITLES:**

12A-15.001 Scope of Rules

12A-15.002 Surtax Brackets

12A-15.003 Admissions; Tangible Personal Property; Services; Service Warranties; Real Property and Transient Accommodations; Use Tax

12A-15.008 Construction Contractors Who Repair, Alter, Improve, and Construct Real Property; Refund of Surtax

12A-15.012 Alcoholic and Malt Beverages

12A-15.014 Transition Rule

**PURPOSE AND EFFECT:** The purpose of this rulemaking is to update the Department's rules relating to discretionary sales surtax to address 2021 legislative changes contained in Chapter 2021-2, Laws of Florida, and Chapter 2021-31, Laws of Florida. Revisions to Rule 12A-15.001 and the proposed repeal of Rule 12A-15.002 remove reference to the sales tax bracket system, which has been replaced by a rounding algorithm (Chapter 2021-2, § 11, L.O.F.). Revisions to Rules 12A-15.003 and 12A-15.008 implement changes regarding the taxation of marketplace sales and remote sales (Chapter 2021-2, L.O.F.). Effective July 1, 2021, marketplace providers and persons who made a substantial number of remote sales in the previous calendar year are required to electronically register with the Department, collect sales tax, and electronically remit collected taxes. Revisions to Rule 12A-15.012 address when a dealer may advertise or hold out to the public that they will pay all or part of the sales tax imposed by Chapter 212 (Chapter 2021-31, § 19, L.O.F.). Revisions to Rule 12A-15.014 replaces the commercial rent tax rate with a statutory citation to capture the rate change which will become effective when the Unemployment Compensation Trust Fund reaches a set dollar amount pursuant to Section 14., Chapter 2021-2, L.O.F.

**SUMMARY:** The proposed revisions to Rule 12A-15.001 strike a reference to the sales tax bracket system and adds a reference to Form DR-15DSS, which provides the discretionary sales surtax rates for all Florida counties and is updated annually. Rule 12A-15.002 is proposed for repeal as the 2021 legislature replaced the sales tax bracket system with a rounding algorithm. The proposed revisions to Rule 12A-15.003 remove obsolete language related to mail order sales and the collection

of discretionary sales surtax; add language to include the sale of tangible personal property sold through a marketplace or by remote sale; replace the term mail order sales with remote sales; and is consistent with emergency rule 12AER21-15. The proposed revision to Rule 12A-15.008 replaces the term mail order sales with the term remote sales and is consistent with emergency rule 12AER21-16. Revisions to Rule 12A-15.012 address 2021 legislative changes to the provisions restricting dealers from absorbing part of or all sales tax in addition to the removal of obsolete language. The proposed revision to Rule 12A-15.014 replaces the commercial rental tax rate with a statutory cross reference, which will allow the rule to remain current when the tax rate is reduced when the balance of the Unemployment Compensation Trust Fund exceeds the amount specified in section 13 of Chapter 2021-2, Laws of Florida.

#### 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:** 212.0596(3), 212.18(2), 213.06(1) FS.

**LAW IMPLEMENTED:** 212.031, 212.05(1), 212.05011, 212.054, 212.055, 212.06(1), 212.07(2), (4), 212.08(4), 212.14(5) 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:** April 21, 2022, at 10:00 a.m.

**PLACE:** 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida 32399. If a meeting is requested in writing, 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/1664552174698348304>.

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](mailto:RuleComments@floridarevenue.com).

#### THE FULL TEXT OF THE PROPOSED RULE IS:

##### 12A-15.001 Scope of Rules.

(1) No change

(2) The list of counties levying the surtax is subject to frequent revision. An up-to-date listing of counties levying the surtax is available, without cost, by one or more of the following methods: 1) downloading Form DR-15DSS, Discretionary Sales Surtax information, updated annually, ~~the appropriate Sales Tax Bracket Cards~~ from the Department's website at [www.floridarevenue.com/taxes/rates](http://www.floridarevenue.com/taxes/rates); or, 2) writing the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112, ~~or, 3) visiting any local Department of Revenue Service Center to personally obtain a copy.~~ Persons with hearing or speech impairments may call the Florida Relay Service at 1(800)955-8770 (Voice) and 1(800)955-8771 (TTY).

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 212.054(2), (4) FS. History—New 12-11-89, Amended 11-16-93, 11-1-05, XX-XX-XX.

##### 12A-15.002 Surtax Brackets.

Rulemaking Authority 212.12(11), 212.18(2), 213.06(1) FS. Law Implemented 212.054, 212.055, 212.12(9), (10), (11) FS. History—New 12-11-89, Amended 8-10-92, 3-17-93, 12-13-94, 3-20-96, 6-19-01, 11-1-05, 6-1-09, Repealed XX-XX-XX.

**12A-15.003 Admissions; Tangible Personal Property; Services; Service Warranties; Real Property and Transient Accommodations; Use Tax.**

(1) through (3) No change

(4) **SALES OF TANGIBLE PERSONAL PROPERTY.**

(a) A dealer who makes sales of tangible personal property, including tangible personal property sold through a marketplace

or by remote sale, is required to collect surtax when the taxable item of tangible personal property is delivered within a surtax county. The dealer is required to collect surtax at the rate imposed by the county where the delivery occurs, whether the delivery is made directly by the dealer or by a manufacturer or wholesaler who delivers the property to the purchaser on behalf of the dealer. When the item of tangible personal property is delivered within a county not imposing a surtax, the dealer is not required to collect surtax.

1. through 3. No change
- (b) through (c) No change
- (5) MAIL ORDER SALES.

(a) A dealer who makes mail order sales, as defined in rule 12A-1.103, F.A.C., is required to collect surtax at the rate imposed by the surtax county where the taxable item of tangible personal property is delivered when:

1. The mail order is placed through a dealer's location within a surtax county and received by the dealer in another state; and,

2. The item is delivered to a location within a surtax county.

(b) 1. Example: A multi-state company has stores in Florida located in surtax counties and in counties that do not impose a surtax. A purchaser places a mail order with the company's mail order division at the dealer's location in County A (a county imposing a 1% surtax). The out of state mail order division ships the merchandise to purchaser's residence in County B (a county not imposing a surtax). Although the company has stores within a surtax county and the order is placed through the dealer's location within a surtax county, the item is not delivered within a surtax county. The selling dealer is not required to collect surtax.

2. Example: A multi-state company has stores in Florida located in surtax counties and in counties that do not impose a surtax. A purchaser places a mail order with the company's mail order division at the dealer's location in County A (a county imposing a 1% surtax). The mail order division ships the item to a residence in County B (a county imposing a 1 1/2% surtax). The transaction occurs in County B. The selling dealer is required to collect sales tax and surtax on the sales price of the merchandise at the rate of 6 1/2% (6% state tax and 1/2% surtax).

- (6) though (9) renumbered (5) through (8) No change
- (9) (10) USE TAX.

(a) Any person who is not required to be a registered dealer but who owes use tax on tangible personal property purchased out-of-state, in another country, or through a remote sale mail order firms or the Internet is not required to pay surtax when paying the applicable use tax to the Department.

- (b) through (e) No change

Rulemaking Authority 212.0596(3), 212.18(2), 213.06(1) FS. Law Implemented 212.04(1), 212.05(1), 212.0506, 212.054, 212.055,

212.0596, 212.06(1), (2), (4), (6), (8), (10), 212.07(8), 212.18(3), 212.183 FS. History—New 12-11-89, Amended 1-30-91, 5-12-92, 8-10-92, 11-16-93, 3-20-96, 6-19-01, 10-2-01, 4-17-03, 5-28-06, XX-XX-XX.

12A-15.008 Construction Contractors Who Repair, Alter, Improve, and Construct Real Property; Refund of Surtax.

(1) LUMP SUM, COST PLUS, FIXED FEE, OR GUARANTEED PRICE CONTRACTS.

- (a) No change

(b) A contractor or subcontractor who is not required to be a registered dealer and who owes use tax on taxable items of tangible personal property purchased out-of-state, in another country, or through a remote sale mail order firms or the Internet for use in a lump sum, cost plus, fixed fee, guaranteed price, or similar type of contract is not required to pay surtax when paying the applicable use tax to the Department.

- (c) No change

- (2) through (4) No change

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 212.02(4), (16), (20), 212.054, 212.055, 212.06(1), 212.14(5) FS. History—New 12-11-89, Amended 5-12-92, 8-10-92, 11-16-93, 3-20-96, 4-17-03, XX-XX-XX.

12A-15.012 Alcoholic and Malt Beverages.

(1)(a) Alcoholic beverages, including beer, ale, and wine, are subject to surtax at the rate imposed by the county where the business is located.

(b) Except as provided in Rule 12A-1.112, F.A.C., a dealer will The dealer shall add the sales tax, plus the applicable surtax, to the sales price of each sale, and may not The dealer is not permitted to advertise or hold out to the public in any manner that the dealer will pay all or absorb any part of the sales tax or surtax due or that the dealer will relieve the purchaser from the payment of sales tax or surtax.

- (b) renumbered (c) No change

- (2) through (3) No change

Rulemaking Authority 212.07(2), 212.18(2), 213.06(1) FS. Law Implemented 212.02(16), 212.054, 212.055, 212.07(2), (4), 212.08(4), 212.12(11), 212.15(1), (4) FS. History—New 12-11-89, Amended 3-20-96, 6-19-01, 11-1-05, 6-1-09, XX-XX-XX.

12A-15.014 Transition Rule.

- (1) No change

(2) Commercial Rentals. Prepayments of rents to avoid increased tax rate are prohibited. Tenants with leases in effect prior to the effective date of any such surtax which provide for payments to be made on and after the effective date of any such surtax, cannot avoid tax by prepaying rent prior to the effective date of the surtax. Commercial rentals will be taxed pursuant to Section 212.031, F.S., at 5.5% plus the surtax rate for all rentals due on or after the effective date of any such surtax.

- (3) No change

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 212.031, 212.05(1), 212.05011, 212.054, 212.055 FS. History—New 12-11-89, Amended 11-16-93, 3-20-96, 10-2-01, 4-17-03, 1-17-18, 1-8-19, 12-12-19, 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: September 9, 2021

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