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 for export or to a common carrier for shipment outside Florida, or mails the property by United States mail to a destination outside Florida.

(b) The provisions of this rule do not apply to sales of aircraft, boats, mobile homes, motor vehicles, or other vehicles. For guidelines on the export of these items from Florida, see Rule 12A-1.007, F.A.C.

(2) Sales of property irrevocably committed to exportation.

(a) A dealer is required to collect tax on sales of tangible personal property when the property is delivered to the purchaser or the purchaser's representative in Florida, whether the disclosed or undisclosed intention of the purchaser is to transport the property to a location outside Florida, or whether the property is actually so transported. Every sale of tangible personal property to a person physically present at the time of sale is presumed to have been delivered in Florida.

(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. The dealer is required by the terms of the sale contract to deliver the property outside Florida using the dealer's own mode of transportation;

2. The dealer is required by the terms of the sale contract to mail the property by United States mail to a destination located outside Florida; or

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. The term "carrier" means a person regularly engaged in the business of transporting tangible personal property owned by other persons for compensation. The term "carrier" includes common carriers and contract carriers.

b. The term "licensed customs broker" means a person licensed by the United States customs service to act as a custom house broker.

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.

d. Any person not engaged in the business of receiving tangible personal property owned by other persons and shipping or arranging for shipping for compensation does not become a carrier or forwarding agent by being designated by the purchaser to receive and ship goods to a point outside Florida.

(c) Any dealer who makes tax-exempt sales of tangible personal property for export outside Florida is required to maintain records to document that the property is committed to the exportation process at the time of sale and that the exportation process is continuous and unbroken until the property is exported from Florida. The dealer is required to maintain records that identify the tangible personal property sold and the delivery destination of the property. The documentation must clearly establish that the property was not commingled with the mass of property within Florida. If the purchaser exercises any act of dominion or control that would constitute "use" of the property by the purchaser in Florida within the meaning of that term set forth in Section 212.02(20), F.S., the property was not irrevocably committed to the exportation process. Examples of records to document sales for export to points outside Florida are:

1. Internal delivery orders identifying the property sold and the destination and date of delivery that are supported by receipts of expenses incurred in delivering the property, such as trip tickets or truck logs signed by the person who delivers the property;

2. United States Postal Service parcel post receipts with supporting documentation identifying the property and the destination;

3. Common carriers' receipts, bills of lading, or similar documentation that evidences the delivery destination;

4. Export declaration;

5. Receipts from a licensed customs broker; or

6. Proof of export signed by a customs officer.

(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.

(e) A dealer who imports taxable tangible personal property into Florida for exportation from Florida is required to maintain documentation that the imported property was irrevocably committed to the exportation process at the time of importation and that the exportation process was continuous and unbroken while such property was within Florida.

(f) 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) Sales to nonresident dealers.

(a) The sale of taxable tangible personal property to a nonresident dealer is exempt when the selling dealer obtains a statement from the nonresident dealer declaring that the tangible personal property will be transported outside Florida by the nonresident dealer for resale and for no other purpose. The statement executed by the nonresident dealer must include the declaration and all of the following information:

1. The nonresident dealer's name and address;

2. Evidence of authority to do business in the dealer's home state or country, such as the nonresident's business name and address, sales tax registration number, occupational license number, or any other evidence of transacting business in that state or country;

3. For nonresident dealers who are not residents of the United States, the dealer's passport or visa number and arrival-departure card number;

4. The following provision: "Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief"; and,

5. The signature of the purchaser executing the statement.

(b) For purposes of this rule, a "nonresident dealer" is any person who does not hold a valid Florida sales tax certificate of registration and who is authorized in another state or country to make sales of tangible personal property in that state or country.

(c) A selling dealer who makes a sale of taxable tangible personal property to a nonresident dealer is required to obtain the required statement or collect the applicable tax on the sale.

(d) The following is a suggested format of the statement to be completed by the purchaser and presented to the selling dealer:

TANGIBLE PERSONAL PROPERTY
FOR RESALE BY A NONRESIDENT DEALER

This is to certify that the tangible personal property described below will be transported outside Florida for resale and for no other purpose.

NAME OF SELLING DEALER: _____

DEALER'S ADDRESS: _____

DEALER'S SALES TAX NO.: _____

NAME OF NONRESIDENT DEALER: _____

ADDRESS OF NONRESIDENT DEALER: _____

HOME STATE'S SALES TAX NO.: _____

PASSPORT OR VISA NO.: _____

ARRIVAL-DEPARTURE CARD NO.: _____

PURCHASER'S EVIDENCE OF AUTHORITY TO DO BUSINESS IN HOME STATE:

_____

The tangible personal property purchased in Florida on INVOICE NUMBER(S) _____, or described as follows, is solely for resale outside Florida.

Description of Property: _____

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

_____ _____

Signature of Purchasing Nonresident Dealer Date

(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. The submission of Form DR-1FA for annual verification is not due in the same calendar year in which an initial Florida Certificate of Forwarding Agent Address is issued or the calendar year in which a certificate is renewed.

(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.

(5) Sales to foreign diplomats, consular employees, and members of their families.

(a) Sales to foreign diplomats, consular officers, consular employees, and members of their families are entitled to certain sales tax exemptions or limitations determined by the United States Department of State when the United States Department of State has determined that the foreign nation represented has a treaty with the United States that exempts United States diplomats, consular officers, consular employees, and members of their families from the foreign country's similar state and local sales taxes. Foreign diplomats and consular personnel seeking an exemption from Florida sales tax must personally present to the vendor at the time of purchase a tax exemption card issued to the individual by the United States Department of State. The tax exemption card will set forth the terms of the sales tax exemption to which the individual is entitled and will serve as the seller's authority to allow the specific sales tax exemption as provided on the card to the named person whose photograph appears on the card.

(b) To document qualified tax-exempt sales to foreign diplomats and consular personnel, the selling dealer must maintain:

1. A copy of both sides of the tax exemption card; or

2. The following information as shown on the tax exemption card issued to the purchaser: mission name, name of purchaser, date of sale, amount of sale, stripe color code or other indication of the level of exemption, expiration date, the tax exemption number, and the United States Department of State card number.

(c) Questions regarding the diplomatic exemption should be directed in writing to the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112 or by telephone to Taxpayer Services at (850)488-6800.

(6) 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. Electronic storage by the selling dealer of the required certificates and other documentation 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), 212.12(9), 212.13(1), (2), (3), (4), 212.21(3), 213.37 FS. History–New 6-12-03, Amended 6-14-22.

12A-1.004 Sales Tax Brackets.

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 212.03(1), (3), (6), 212.031(1)(c), (d), 212.04(1), 212.05(1), 212.08(3), 212.12(9), (10), (11) FS. History–New 10-7-68, Amended 6-16-72, 9-24-81, 7-20-82, Formerly 12A-1.04, Amended 12-13-88, 8-10-92, 3-17-93, 12-13-94, 6-19-01, 11-1-05, 9-1-09, 1-17-18, Repealed 6-14-22.

12A-1.005 Admissions.

(1)(a) Every person is exercising a taxable privilege when such person sells or receives anything of value by way of admissions, as defined in Section 212.02(1), F.S., except those admissions that are specifically exempt. Such seller is required to collect tax on the sales price or actual value of such admissions pursuant to Section 212.04(1)(b), F.S. Tax due must be calculated using the rounding algorithm as provided in Section 212.12(10), F.S. The seller may apply the rounding algorithm to the aggregate tax amount computed on all taxable admissions on an invoice or to the taxable amount of each individual admission on the invoice.

(b) It is required that either:

1. The seller collecting the charge for an admission prominently display, at the box office or other place where the admission charge is collected, a sign or other easily read notice disclosing the price of the admission; or

2. The face of each ticket sold reflect the actual sales price of the admission.

(c)1. The tax is due at the moment of the transaction, except when the tax is collected for admission to an event at a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility. Tax collected on such events is due to the Department on the first day of the month following the actual date of the event for which the admission is sold and becomes delinquent on the 21st day of that month. Therefore, tax collected on season and series tickets for events held in such facilities should be apportioned to each event in the season or series and remitted to the Department accordingly.

2. An agent who collects admissions on behalf of a principal may forward the collected tax funds to the principal to be remitted by the principal to the Department. Both the principal and agent can be held liable for any failure to timely remit such tax funds to the Department. An agent shall not, however, be liable for its principal's failure to timely remit tax funds to the Department if the agent has obtained the principal's active Florida sales tax number and has disclosed in writing to the principal that when such agent remits proceeds from the sale of an admission to the principal the proceeds may include amounts that represent admissions tax and that it is the principal's obligation to timely remit any taxes due and owing to the Department or other taxing authority.

3. When tickets or admissions are sold and not used but are instead returned to the seller, the seller shall credit or refund the sales tax to the purchaser. See Rule 12A-1.014, F.A.C., for the methods the seller is to use to obtain a credit or refund.

4. A refundable deposit that is paid to reserve the right to purchase season tickets, box seats, or other admissions, that is recorded on the books of the seller as a liability, and that does not entitle the payer to the right to be admitted to the event or events, is not subject to tax. If the refundable deposit is applied to the purchase of the season tickets, box seats, or other admissions, tax is due to the Department as provided in this paragraph.

(d) Operators of traveling shows, exhibitions, amusements, circuses, carnivals, rodeos, and similar traveling events shall, upon request of an agent of the Department of Revenue, produce a cash receipt or similar documentation evidencing payment to the State of admission taxes due on any or all previous engagements in Florida during their current tour and an itinerary of future engagements in this State during the current year. The operator must document any performance in Florida that is sponsored by a not-for-profit entity that qualifies under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, for which the admission charges are exempt from tax.

(2) Exempt admissions. The following admissions are exempt from the tax imposed under Section 212.04, F.S.:

(a) Admissions to athletic or other events held by schools, as provided in Section 212.04(2)(a)1., F.S., are exempt.

(b) Admissions for students who are required to participate in a sport or recreation, provided the program or activity is sponsored by and under the jurisdiction of the educational institution and attendance is as a participant and not as a spectator are exempt. The institution will issue a certificate for the student to present to the person charging the admission in order to provide for this exemption.

(c) Admissions to agricultural fairs are exempt, as provided in Sections 212.08(7)(gg) and 616.260, F.S.

(d) Admissions to the following professional or collegiate sporting events are exempt, as provided in Sections 212.04(2)(a)5. and 10., F.S.;

1. National Football League championship game or Pro Bowl;

2. Major League Baseball, Major League Soccer, National Basketball Association, or National Hockey League all-star game and Major League Baseball Home Run Derby held before the Major League Baseball all-star games;

3. National Basketball Association all-star events produced by the National Basketball Association and held at a facility such as an arena, convention center, or municipal facility;

4. Any semifinal or championship game of a national collegiate tournament or any postseason collegiate football game sanctioned by the National Collegiate Athletic Association.

(e) Participation fees or sponsorship fees to athletic or recreational structured programs imposed by governmental entities as described in Section 212.08(6), F.S., when such governmental entities sponsor, administer, plan, supervise, direct, and control such athletic or recreational programs are exempt. An organization qualified under s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, may work in conjunction with the governmental entity to sponsor, administer, plan, supervise, direct, and control the athletic or recreational structured program without affecting the exemption.

1. Example: A city or county park and recreation department sponsors, administers, plans, supervises, directs, and controls its adult softball, little league, and other team recreation programs. The park and recreation department charges $100.00 for each team participating, or it may charge $10.00 per person for each person to participate. At the end of league play, a tournament is held to determine the championship. The participation fees charged for league and tournament play are exempt from tax as an athletic structured program.

2. Example: A city operates a swimming pool. It charges an admission price of $2.00 for each adult and $1.00 for each child to enter the pool. The admission charges are taxable since this is not a structured athletic or recreational program.

3. Example: A city or county park and recreation department sponsors, administers, plans, supervises, directs, and controls pottery and ceramics classes. The park and recreation department charges each person $20.00 to participate. The participation charges are exempt as a recreational structured program.

4. Example: A not-for-profit organization that is not qualified under s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, sponsors a softball tournament and charges each team $250 to participate. The organization rents the softball field from the city. The $250 participation fee is subject to tax. If the organization is not registered to collect and remit sales tax, the organization must contact the local taxpayer service center to obtain a special events sales tax remittance number. The rental of the ball field by the city to the organization is taxable, unless the not-for-profit organization holds a Consumer’s Certificate of Exemption and issues a copy of its certificate to the city.

(f) Dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations are exempt. To receive this exemption, the organization making any such charges must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

(g) Admission charges to an event held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility are exempt when:

1. The event is sponsored by a sports authority or commission, exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, as amended, that is contracted with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community or is sponsored by a governmental entity;

2. 100 percent of the funds at risk belong to the sponsoring entity;

3. 100 percent of the risk of success or failure lies with the sponsoring entity; and,

4. The talent for the event is not derived exclusively from students or faculty.

(h) Entry fees for participation in fresh water fishing tournaments, as provided in Section 212.04(2)(a)7., F.S., are exempt.

(i) Participation or entry fees charged to participants in a game, race, or other sport or recreational event when spectators are charged a taxable admission to such event, as provided in Section 212.04(2)(a)8., F.S., are exempt.

(j) Admissions charged by physical fitness facilities owned or operated by any hospital licensed under Chapter 395, F.S., as provided in Section 212.02(1), F.S., are exempt.

(k) Admissions to live theater, live opera, or live ballet productions, as provided in Section 212.04(2)(a)6., F.S., are exempt. The application required in Section 212.04(2)(a)6., F.S., should be addressed to:

Department of Revenue
Central Registration
P.O. Box 6480
Tallahassee, Florida 32314-6480.

(3) Taxable admissions and participation fees. The following paragraphs contain examples of admission charges that are subject to tax, unless such admissions are specifically exempt under the provisions of Section 212.04(2), F.S. This list is not intended to be an exhaustive list.

(a) Admissions to any place of amusement, sport, or recreation are subject to tax.

(b) Admissions to places of amusement, operated under the supervision of the State Racing Commission and any admissions to such place for events not under the supervision of the State Racing Commission, are subject to tax.

(c) Admissions to attractions, shows, carnivals, exhibitions, and to fairgrounds that do not qualify for exemption under the provisions of Sections 212.08(7)(gg) and 616.260, F.S., are subject to tax. Fairgrounds shall be deemed to mean any area for which a charge is made to view exhibits or entries.

(d) Charges to attend consumer trade shows and exhibitions are subject to tax.

(e) Charges made at carnivals, fairs, amusement parks, and similar locations for rides, such as on merry-go-rounds, roller coasters, ferris wheels, and similar rides, are admissions subject to tax.

(f) Charges for live pony rides are admissions subject to tax.

(g) Charges made for the privilege of bowling, golfing, swimming, using trampolines, for playing billiards, ping pong, tennis, squash, badminton, slot racing, go-kart racing, and similar sports are admissions subject to tax.

(h) Admissions to theatres, mini-theatres, outdoor theatres, and shows are subject to tax.

(i) Charges made for participation in saltwater fishing tournaments are subject to tax.

(j) Charges made for the privilege of entering or engaging in any kind of activity for which no admission charge is made to spectators are subject to tax. When spectators are charged a taxable admission to a game, race, or other sport or recreational event, the participation or entrance fees are exempt. The purchase of taxable items used by the sponsoring entity are subject to tax, even though receipts from charges for the participation or entrance fees are used to make such purchases.

1. Example: A private golf club hosts a local tournament and charges $100.00 entry fee from all participants with no admission charge made to spectators. The entry fee covers the greens fees, cart rental, and a meal for each participant, with the excess being used to purchase gifts, gift certificates, and trophies to be given to the winners. The entry fee is subject to tax, even if the charge for each item is separately itemized. The purchase of gifts, trophies, and other promotional items by the club is subject to tax. If the club is donating a gift that it has in its inventory for sale, the club is required to accrue and remit the tax on the cost of the gift at the time it is removed from inventory. When the winning participants are given gift certificates to be used to purchase merchandise from the club, the club is deemed to be selling the merchandise, and it shall collect the tax from the gift certificate holders at the time the merchandise is sold.

2. Example: A sponsoring golf association enrolls participants to participate in a tournament for a fee of $100.00 with $20.00 of the fee attributable to organizational services provided by the sponsor and $80.00 attributable to the club’s charges for an unlimited number of rounds and the use of a golf cart, with the excess being used to purchase gifts, gift certificates, and trophies to be given to the winners. No tax is due on the $100.00 fee paid by the participant to the sponsoring organization. The $80.00 entry fee paid by the sponsoring organization to the club is taxable, even if the charge for each item is separately itemized. The purchase of gifts, trophies, and other promotional items by the club is subject to tax. When participants are given gift certificates to be redeemed for merchandise from the club’s pro shop, the club is deemed to be selling the merchandise and shall collect tax from the gift certificate holders at the time the holder redeems the certificate for merchandise.

(k)1. When the owner of a boat or vessel operated as a “head-boat” or “party boat” supplies the crew, which remains under the control and direction of the owner, and makes a charge measured on an admission or entrance or length of stay aboard the vessel for the privilege of participating in sightseeing, dinner cruises, sport, recreation, or similar activities including fishing, the charge is taxable as an admission.

2. The charge made by an owner or operator for chartering any boat or vessel, with a crew furnished, solely for the purpose of fishing is exempt.

3. Charges made by foreign registered vessels carrying passengers to international waters where passengers cannot disembark from the vessel at points other than the origination point (cruises to nowhere) are taxable. If the vessel docks, and passengers can disembark, the charge is considered to be for transportation and is exempt from tax.

(l) Charges measured on an admission or entrance or length of stay for rides on sightseeing trolley cars, sightseeing buses or trains, or any sightseeing or amusement ride where the participant is normally returned to the origination point are taxable. This does not apply to:

1. Charter or regularly scheduled aircraft, bus, taxi, trolley, or train travel where the passengers may disembark for shopping, dining, or other activities at points other than the origination point; or

2. Individuals traveling in air commerce, such as skydiving, helicopter, or untethered hot air balloon rides, pursuant to 49 U.S.C. s.40116.

(m) Charges made for tethered hot air balloon rides are taxable.

(4) Dues and initiation fees, equity and nonequity memberships, capital contributions and assessments, refundable deposits, and

user fees.

(a)1. Dues and user fees paid to any organization, including athletic clubs, health spas, civic, fraternal, and religious clubs, that provide physical fitness facilities or recreational facilities, such as golf courses, tennis courts, swimming pools, yachting, boating, athletic, exercise, and fitness facilities, are subject to tax. Dues and user fees do not include:

a. Charges for initiation into, or for joining, an organization that are paid by persons to obtain an equitable ownership interest in the organization. The equitable ownership interest may be transferrable, with or without consideration, directly to another party or to the organization.

b. Additional charges paid by an equity member when joining an organization that are used by the organization solely for capital expenditures, capital improvements to the organization's facilities, or for debt servicing such expenditures and improvements by the organization. Examples of these types of payments and the use of such amounts include amounts expended for rebuilding and/or replacing the grass on greens or fairways; rebuilding and/or replacing bunkers; planting of additional trees; resurfacing and/or construction of tennis courts; resurfacing and/or construction of swimming pools; amounts expended for new furniture, fixtures and equipment; amounts expended for clubhouse renovations; amounts expended for kitchen equipment and utensils; amounts expended to improve the irrigation system; amounts expended to acquire assets to enable the club to comply with environmental laws; amounts expended for acquiring maintenance equipment; amounts expended for new golf carts; and amounts expended for the installation of equipment on golf carts. Repairs to, or maintenance of, existing capital assets that do not materially add to the value or appreciably prolong the useful life of a capital asset are not deemed to be capital expenditures or capital improvements by the organization.

c. Capital assessments levied by an organization against persons who are, or seek to become, members of the organization.

d. Capital contributions or additional paid-in capital paid to an organization by individuals who have an equitable ownership interest in the organization.

2. Recurring or nonrecurring capital contributions or additional paid-in capital, or capital assessments, paid to an organization in a lump sum or by installments, are not subject to tax when such payments are:

a. Separately accounted for and not recorded in an operating revenue account by the organization.

b. Not paid for the right to use the organization's recreational, physical fitness, or other facilities or equipment without subsequent periodic payments;

c. Not used to effect a decrease in user fees or periodic membership dues; and,

d. Not used to pay for the operating expenses of the organization.

(b) For purposes of this rule:

1. The phrase, "equitable ownership interest," means an interest that entitles a person to receive from the organization evidence or indicia of such ownership, the right to vote on decisions of the organization that are subject to determination by the organization's members or owners, and the right to receive a proportionate share of the organization's assets upon its dissolution, unless all such net assets are distributable upon dissolution to an organization exempt from federal income taxation or to a qualifying common interest realty association. The ownership interest must be reflected by the issuance of stock, a membership certificate, or similar instrument evidencing an ownership interest in the organization.

2.a. The phrases "capital contributions" or "additional paid-in capital" mean equity payments that by themselves do not entitle an individual to use the facilities or equipment of an organization and that are intended as an investment to maintain or enhance members' and owners' interests in the organization.

b. The phrase "capital assessments" means payments made by members of an organization that by themselves do not entitle an individual to use the facilities or equipment of an organization and that are used solely for capital expenditures, for capital improvements to the organization's facilities, or for direct allocation to debt servicing such expenditures and improvements by the organization.

(c) Fees paid to private clubs or membership clubs as a condition precedent to, in conjunction with, or for the use of the club's recreational or physical fitness facilities are subject to tax. Examples of such fees are:

1. User fees paid by members or nonmembers to an organization that entitle the payor to use the organization's recreational or physical fitness facilities or equipment.

2. Dining room minimum fees.

3. Social membership fees when such payments are required of members who hold no equitable interest in, or ownership of, the club.

4. Periodic payments required to be paid by members or any payment required of a nonmember in order to use the club's facilities.

(d) Fees paid to private clubs or membership clubs that do not entitle the payor to the use of the club's recreational or physical fitness facilities are not subject to tax. Examples of such fees are:

1. Charges to members or nonmembers to establish or maintain a handicap, ranking, or average.

2. Charges for professional instructions in any sport conducted at the club, so long as such charges are exclusively for the instructions and include the use of the facility only during the period of time the instructions are taking place. It is not the intention of this rule to allow a club to exempt what is in effect a dues or membership fee by labeling such charges as instruction fees.

3. Mandatory dues and fees paid to a condominium association, homeowners' association, or cooperative association when they are required to be paid as a condition of ownership or occupancy of real property and the club facilities are part of the common elements or common areas of the real property.

(e) Refundable deposits advanced to an organization when the organization is obligated to repay the deposit and the deposit is reflected as a liability in the organization's books and records are not subject to tax. The organization's obligation to repay refundable deposits must be evidenced by a promissory note, a bond, or other written documentation.

(f) Dues and fees paid by persons for membership in clubs that do not entitle the members to use recreational or physical fitness facilities are not subject to tax. Examples of such clubs are sewing clubs, bowling clubs, square dancing clubs, bridge clubs, and gun clubs where the dues or fees entitle the payor to be a member of the club, but do not entitle the payor to use recreational or physical fitness facilities.

(5) Resale of admissions.

(a) There is no tax exempt sale for resale of an admission. If a purchaser of an admission resells the admission for more than he paid for the admission, he shall collect tax on his sales price, take a credit for the amount of tax previously paid on the admission, and remit the balance to the Department of Revenue.

(b) When the purchaser of an admission resells the admission for the same amount or less, tax shall not be collected, and no credit is allowed for tax previously paid.

(c)1. When an admission is resold to an entity exempt from sales tax, the selling dealer may claim a credit or seek a refund from the Department for the amount of tax it paid on its purchase of the admission. This provision does not apply to sales of admissions to an exempt entity for resale. To receive a refund of tax paid on an admission that is resold to an entity exempt from sales tax, the selling dealer must file an Application for Refund-Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department within 3 years after the date the tax was paid. The applicant shall include the exempt entity's Consumer's Certificate of Exemption, or other applicable proof of the entity's exempt status, as well as a copy of the documentation that provides evidence of the tax the applicant paid for the admission that was subsequently resold, such as a ticket or invoice. In lieu of filing an application for refund for tax paid on an admission that is resold to an entity exempt from sales tax, the selling dealer may claim a lawful deduction on its sales and use tax return. The selling dealer must retain copies of the supporting documentation necessary to substantiate its entitlement to a refund or credit of tax paid until tax imposed under Chapter 212, F.S., may no longer be determined and assessed under Section 95.091, F.S.

2. The purchaser of an admission that is resold to an entity exempt from sales tax may seek a refund of the tax paid on the admission directly from the selling dealer when the purchaser and selling dealer are members of the same controlled group of corporations for federal income tax purposes. If the related selling dealer has remitted the tax collected from the related purchaser to the Department it may claim a credit or seek a refund from the Department for the sales tax that it refunded to the related purchaser by obtaining the supporting documentation and following the procedures provided in paragraph (5)(c). If the related selling dealer has not remitted the tax collected from the related purchaser, the selling dealer should retain copies of the supporting documentation necessary to substantiate its entitlement to a refund or credit in lieu of remitting the tax to the Department. The documentation must be retained until tax imposed under Chapter 212, F.S., may no longer be determined and assessed under Section 95.091, F.S.

(6) Sales of vacation packages.

(a) For purposes of this subsection, a "vacation package" means a bundle consisting of two or more components, such as admissions, transient rentals, transportation, or meals. Coupon books, maps, or other incidental items, that are provided free of charge as part of a vacation package are not considered "components" for purposes of this subsection.

(b) Tax is due on the purchase of taxable components of a vacation package at the time of purchase. No additional tax is due on the components that are incorporated into a vacation package and sold by a travel agent, when all of the following conditions are

met:

1. The vacation package sold by the travel agent includes two or more components;

2. There is no separate itemization of the sales price of the package for the admission, transient rental, transportation, meal, or any other component of the vacation package; and,

3. All components of the vacation package were purchased by the travel agent from other parties and any sales tax due on such purchases was paid at the time of purchase.

(c) A travel agent who itemizes the sales price of the taxable components of a vacation package must register with the Department as a dealer. (See Rule 12A-1.060, F.A.C., Registration). Travel agents who itemize the sales price of the taxable components of a vacation package are required to collect tax from the purchaser as follows:

1. When the itemized components are sold for the same amount or less than was paid for each of them, the travel agent is not required to collect any additional tax. No credit is allowed for tax paid on the purchase of the taxable components.

2. When the itemized components are sold for more than the purchase price of each component, the travel agent is required to collect tax on the sales price of the taxable components. The travel agent may take a credit of tax previously paid for the taxable components that are separately itemized at a sales price greater than the purchase price of the component.

(d) When the seller of components of a vacation package and the purchasing travel agent are members of the same controlled group of corporations for federal income tax purposes and the amount charged for the component is an amount less than the price charged to unrelated travel agents under normal industry practices, the related travel agent is required to itemize the sales price of the components to the purchaser and collect tax on the itemized taxable components. The travel agent may take a credit of tax previously paid for the taxable components.

Rulemaking Authority 212.04(4), 212.17(8), 212.18(2), 213.06(1) FS. Law Implemented 212.02(1), 212.04, 212.08(6), (7)(gg), 616.260 FS. History–New 10-7-68, Amended 1-7-70, 6-16-72, 7-19-72, 12-11-74, 9-28-78, 7-3-79, 12-3-81, 7-20-82, Formerly 12A-1.05, Amended 1-2-89, 12-16-91, 10-17-94, 3-20-96, 3-4-01, 10-2-01, 4-17-03, 6-28-05, 4-26-10, 1-12-11, 1-17-13, 1-19-15, 1-17-18, 6-14-22.

12A-1.020 Licensed Practitioners; Drugs, Medical Products and Supplies.

(1) Scope.

(a) Section 212.08(2), F.S., provides an exemption for certain items used in the practice of medicine by hospitals and healthcare entities or by physicians, dentists, and other licensed practitioners. This rule is intended to clarify the application of tax to items sold to hospitals and healthcare entities or to physicians, dentists, and other licensed practitioners for use in their practice of medicine. This rule is also intended to clarify the exemption for chemical compounds and test kits, common household remedies, drugs, eyeglasses and lenses, medical gases, and medical products, supplies, and devices.

(b) Rule 12A-1.021, F.A.C. (Prosthetic and Orthopedic Appliances), is intended to clarify the exemption provided in Section 212.08(2), F.S., for prosthetic and orthopedic appliances.

(c) Rule 12A-1.0215, F.A.C. (Veterinary Sales and Services), is intended to clarify the application of tax to items used in the practice of veterinary medicine, for the exemptions provided for substances possessing curative or remedial properties, and for medical products, supplies, and devices used in the treatment of animals.

(2) Licensed practitioners.

(a) For purposes of this rule, a “licensed practitioner” is any person who is duly licensed and authorized by laws of the State of Florida to administer, prescribe, or dispense, as appropriate, a drug or device for medical purposes.

(b) Hospitals, healthcare entities, and licensed practitioners are required to pay tax at the time of purchase on taxable items or services used or consumed in providing medical services. See Rule 12A-1.038, F.A.C., for purchases by hospitals or healthcare entities that hold a valid Consumer’s Certificate of Exemption issued by the Department.

(3) Drugs.

(a) Drugs and medicinal drugs used in connection with medical treatment are exempt. The term “drug” or “medicinal drug” means those substances or preparations commonly known as “prescription” or “legend” drugs that are required by federal or state law to be dispensed only by a prescription.

(b) Opaque drugs, including X-ray opaques, and radiopaque, such as the various opaque dyes and barium sulphate, that are used in connection with medical X-rays for the treatment of human bodies are exempt.

(4) Medical gases.

(a) Compressed medical gases and medical oxygen in compliance with the provisions of Rule 61N-1.007, F.A.C., are exempt.

(b) The charge for filling or refilling tanks containing compressed air or nitrox to be used for scuba diving is subject to tax.

(5) Common household remedies; cosmetics; toilet articles; hygiene products.

(a)1. Common household remedies recommended and generally sold for internal or external use in the cure, mitigation, treatment, or prevention of illness or disease in human beings, according to a list prescribed and approved by the Department of Business and Professional Regulation and certified to the Department of Revenue, are exempt. This list is contained in Form DR-46NT, Nontaxable Medical and General Grocery List (incorporated by reference in Rule 12A-1.097, F.A.C.).

2. Common household items that are not intended to cure, mitigate, treat, or prevent illness or disease in human beings are subject to tax. For example, disinfectants used for the sterilization of glass, containers, utensils, or equipment are subject to tax; products used for the purification of air or for deodorants are subject to tax; chlorine used for the treatment of water in swimming pools is subject to tax.

(b) The exemption provided for common household remedies does not include cosmetics or toilet articles, even when the cosmetic or toilet article contains medicinal ingredients. Cosmetics and toilet articles, including those that contain medicinal ingredients, are subject to tax, except when dispensed pursuant to a prescription written by a licensed practitioner.

1. For purposes of this rule, “cosmetics” means any article intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. The term includes articles intended for use as a compound of any such articles, such as cold creams, suntan products, makeup, and body lotions.

2. For purposes of this rule, “toilet articles” means any article advertised or held out for sale for grooming purposes and those articles which are customarily used for grooming purposes, regardless of the name by which they may be known, such as soaps, toothpastes, hair sprays, shaving products, colognes, perfumes, shampoos, deodorants, and mouthwashes.

(c) Personal hygiene products, except when dispensed pursuant to a prescription written by a licensed practitioner, are subject to tax.

(d) Contraceptive products, except when dispensed pursuant to a prescription written by a licensed practitioner, are subject to

tax.

(e) Taxpayers who have a question regarding the taxable status of a product may submit a written description of the product, including the product name, ingredients, and recommended uses, to the Department. This request should be addressed to the Florida Department of Revenue, Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, Florida 32314-7443.

(6) Medical products, supplies, or devices.

(a) "Medical products, supplies, or devices" are any products, supplies, or devices that are intended or designed to be used for a medical purpose to treat, prevent, or diagnose human disease, illness, or injury. The purpose is assigned to a product, supply, or device by its label or its general instructions for use.

(b) Unless specifically exempt, products, supplies, or devices sold to hospitals and healthcare entities or to licensed practitioners are subject to tax. Examples of items that do not qualify for exemption are: absorbent cotton; gloves, gowns, uniforms, masks, drapes, or towels; infusion pumps; reusable knives, needles, or scissors; scales; ear syringes; tongue depressors; specimen bags; instruments, equipment, and machines and their parts and accessories; microscopes; examination tables; hospital beds; X-ray machines; X-ray films and developing solutions; computerized axial tomography (CAT) machines; and magnetic resonance imaging (MRI) machines. This is not intended to be an exhaustive list.

(c)1. Medical products, supplies, or devices sold to hospitals, healthcare entities, or licensed practitioners are exempt when:

a. The medical product, supply, or device must be dispensed under federal or state law only by the prescription or order of a licensed practitioner; and,

b. The medical product, supply, or device is intended for use on a single patient and is not intended to be reusable.

2. Medical trays and surgical or procedure kits containing medical products, supplies, or devices that are labeled to be dispensed only by the prescription or order of a licensed practitioner and are intended for use on a single patient are exempt, even when the medical tray or kit contains one or more items that, when sold separately, would be subject to tax.

3. No exemption certificate or Annual Resale Certificate is required to be obtained by the selling dealer from the purchasing hospital, healthcare entity, or licensed practitioner to document exempt sales of medical products, supplies, or devices that are labeled to be dispensed only by the prescription or order of a licensed practitioner. However, selling dealers are required to maintain documents in their records evidencing that the medical product, supply, or device sold to a hospital, healthcare entity, or licensed practitioner is labeled to be dispensed only by the prescription or order of a licensed practitioner.

(d)1. Medical products, supplies, and devices used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease or incapacity of a patient(s) that are temporarily or permanently incorporated into a patient(s) by a licensed practitioner are exempt.

2. A licensed practitioner, or an authorized representative of the licensed practitioner, may extend an exemption certificate to the selling dealer certifying that the purchased medical products, supplies, or devices will be temporarily or permanently incorporated into a patient(s) for the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity of a patient(s). For example, a licensed dentist may purchase gold, silver, amalgam, or other dental restorative materials used for dental fillings exempt from tax by extending an exemption certificate to the supplier when those materials are not labeled "Rx only." A suggested exemption certificate is provided in subsection (11).

3. Any person that is not a licensed practitioner must register with the Department as a dealer, as provided in Rule 12A-1.060, F.A.C., to sell medical products, supplies, or devices in Florida. Registered dealers may purchase products, supplies, or devices for the purposes of resale, or materials to manufacture, compound, process, or fabricate such items for sale, by extending a copy of its Annual Resale Certificate to the selling dealer, as provided in Rule 12A-1.039, F.A.C.

4. No exemption certificate or Annual Resale Certificate is required to make purchases of medical products, supplies, or devices exempt from tax when:

a. The item is listed as an item exempt from tax in Form DR-46NT, Nontaxable Medical Items and General Grocery List; or,

b. The label of the medical product, supply, or device indicates that it must be dispensed under federal or state law by the prescription or order of a licensed practitioner and that it is intended for use on a single patient.

(e) Medical products, supplies, and devices are exempt when dispensed to a patient according to an individual prescription written by a licensed practitioner.

(7) Chemical compounds and test kits.

(a) The sale of chemical compounds and test kits used for the diagnosis or treatment of human disease, illness, or injury is exempt. The following is a nonexhaustive list of chemical compounds and test kits that are not subject to tax:

1. Allergy test kits that use human blood to test for the most common allergens;

2. Anemia meters and test kits;

3. Antibodies to Hepatitis C test kits;

4. Bilirubin test kits (blood or urine);

5. Blood analyzers, blood collection tubes, lancets, capillaries, test strips, tubes containing chemical compounds, and test kits to test human blood for levels of albumin, cholesterol, HDL, LDL, triglycerides, glucose, ketones, or other detectors of illness, disease, or injury;

6. Blood sugar (glucose) test kits, reagent strips, test tapes, and other test kit refills;

7. Blood pressure monitors, kits, and parts;

8. Breast self-exam kit;

9. Fecal occult blood tests (colorectal tests);

10. Hemoglobin test kits;

11. Human Immunodeficiency Virus (HIV) test kits and systems;

12. Influenza AB test kits;

13. Middle ear monitor;

14. Prostate Specific Antigen (PSA) test kits;

15. Prothrombin (clotting factor) test kits;

16. Thermometers, for human use;

17. Thyroid Stimulating Hormone (TSH) test kits;

18. Urinalysis test kits, reagent strips, tablets, and test tapes to test levels, such as albumin, blood, glucose, leukocytes, nitrite, pH, or protein levels, in human urine as detectors of illness, disease, or injury;

19. Urinary tract infection test kits; and,

20. Vaginal acidity (pH) test kits.

(b) Chemical compounds and test kits that are not used to diagnose or treat human disease, illness, or injury are subject to tax. The following is a nonexhaustive list of chemical compounds and test kits that do not test for human illness, disease, or injury and are subject to tax:

1. Blood typing test kits for home use;

2. DNA tests (such as maternity tests, paternity tests, sibling ship tests, twin zygosity tests, ancestry testing, avuncular (grandparent, aunt, and uncle) tests, male lineage tests, or article tests);

3. Drug and alcohol (including nicotine) test kits;

4. Ethanol breathalyzer tests (alcohol intoxication);

5. Follicle stimulating hormone (FSH) test kits;

6. Hazard chemicals detection kits:

7. Male fertility (semen analysis) test kits;

8. Menopause monitors and test kits;

9. Ovulation/leutinizing hormone (LH) test kits;

10. Personal wellness or body balance check test kits, such as those to measure hormone levels, cortisol levels, melatonin levels, mineral levels, or antioxidant levels; and,

11. Pregnancy test kits.

(8) Prescribed parts and attachments.

(a) Parts, special attachments, special lettering, and other like items that are added to or attached to tangible personal property to assist a person with special needs are exempt when purchased pursuant to an individual prescription. When purchased without an individual prescription, these items are subject to tax. For example, items installed on motor vehicles to make them adaptable for use by persons with special needs, such as special controls, purchased pursuant to a written prescription are exempt; however, the motor vehicle and the standard or optional equipment available on the motor vehicle are subject to tax.

(b) If tangible personal property is sold with special controls, lettering, or devices, and the additional charge for the added features is separately stated on the sales invoice for the tangible personal property, that charge for the added features is exempt when purchased pursuant to an individual prescription.

(9) Orthopedic, therapeutic, or corrective shoes.

(a) Orthopedic shoes made to specifications prescribed by a podiatrist, orthopedist, or other licensed practitioner for the purpose

of treating or preventing illness or disease, or to correct physical incapacity are exempt. Therapeutic shoes and inserts prescribed by a licensed practitioner for purposes of treating diabetic foot disease and provided by a podiatrist, orthotist, prosthetist, or pedorthist are exempt.

(b) Shoes made to order for special fitting problems, such as narrow or large feet, are subject to tax.

(c) When a shoe is modified to specifications prescribed by a podiatrist, orthopedist, or other physician by the insertion of a lift, a wedge, or an arch support for the purpose of treating or preventing illness or disease, or to correct physical incapacity, the charge for the shoe is subject to tax. However, any reasonable separately stated charge for the modification is exempt. If no separate charge is made for the modification, the entire charge is subject to tax.

(d) When a shoe is modified for a more comfortable fit (e.g., heel pad inserted or insole added), for improving the style, or for similar purposes, the total charge for the modification and the shoe is subject to tax.

(10) Eyeglasses and lenses.

(a) Prescription eyeglasses, incidental items, and items that become a part of prescription eyeglasses are exempt. Prescription eyeglasses include lenses, including contact lenses, prescribed for the correction of a patient's refractive effort, for the improvement of a patient's vision, or for protective purposes. Incidental items include frames, component parts, carrying cases, contact lens cases, and other similar items.

(b) The sale of eyeglass lens cleaning solutions, contact lens cleaning solutions, and contact lens disinfectants are subject to tax.

(c) The sale of standard or stock eyeglasses, incidental items, or items that become a part of standard or stock eyeglasses, without a prescription, is subject to tax. Some examples are: frames and component parts, carrying cases, safety glasses, sunglasses, field glasses, opera glasses, and magnifying glasses.

(d) When the purchaser of one-time items that transfer essential optical characteristics to contact lenses has paid at least $100,000 in tax (sales tax, plus discretionary sales surtax) in any calendar year on such purchases, the purchaser is exempt from tax on purchases of such items for the remainder of that calendar year. Purchasers who hold a valid Sales and Use Tax Direct Pay Permit issued by the Department may make purchases of these items exempt from tax when:

1. The purchaser extends a copy of a valid Sales and Use Tax Direct Pay Permit, as provided in Rule 12A-1.0911, F.A.C., to the selling dealer at the time of purchase; and,

2. The purchaser pays to the Department each calendar year $100,000 in tax due on purchases of one-time items that transfer essential optical characteristics to contact lenses during the calendar year.

(11) Items that assist in independent living. The following items, when purchased for noncommercial home or personal use, are exempt from tax:

(a) A bed transfer handle selling for $60 or less.

(b) A bed rail selling for $110 or less.

(c) A grab bar selling for $100 or less.

(d) A shower seat selling for $100 or less

(12) Suggested exemption certificate; recordkeeping requirements.

(a) The following is a suggested exemption certificate to be issued to purchase qualified medical products, supplies, or devices exempt from tax at the time of purchase:

EXEMPTION CERTIFICATE

MEDICAL PRODUCTS, SUPPLIES, DEVICES, OR MATERIALS

I, the undersigned individual, as a practitioner licensed in the State of Florida, or an authorized representative of a licensed practitioner, certify that the medical products, supplies, devices, or other materials purchased on or after_____(date) from _____(Selling Dealer's Business Name): _____

(Check the use that qualifies the product, supply, device, or material for exemption)

( ) Meet the definition of a medical product, supply, or device and will be dispensed by a licensed practitioner.

( ) Will be used in the cure, mitigation, alleviation, prevention, or treatment of injury, disease, or incapacity of a patient and will be temporarily or permanently incorporated into a patient(s) by a licensed practitioner.

I understand that if I use the medical product, supply, device, or other materials for any nonexempt purpose, I must pay tax on the purchase price of the item directly to the Department of Revenue.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax, I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate and that the facts stated herein are true.
Name of Licensed Practitioner: _____
Florida License Number:_____ Address: _____
_____
Name of Authorized Representative: _____
(Signature of Licensed Practitioner or Authorized Representative)
_____
Title
_____
Date

(b) The selling dealer is only required to obtain one certificate for sales made for the purposes indicated on the certificate and is not required to obtain an exemption certificate for subsequent sales made to the same licensed practitioner or authorized representative. The selling dealer must maintain the required exemption certificates in its books and records until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

(c) Dealers must maintain copies of exemption certificates, Annual Resale Certificates, prescriptions, and any 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.

(d) Electronic storage by the selling dealer of the required certificates, prescriptions, and other documentation will be sufficient compliance with the provisions of this subsection.

Rulemaking Authority 212.08(2)(a), 212.18(2), 213.06(1) FS. Law Implemented 212.08(2), (5)(u), 212.085, 212.12(6)(a), 213.37, 465.187 FS. History–New 10-7-68, Amended 1-17-71, 6-16-72, 5-27-75, 5-10-77, 6-26-78, 2-26-79, 6-3-80, 12-31-81, 8-28-84, Formerly 12A-1.20, Amended 12-8-87, 7-12-10, 6-14-22.

12A-1.056 Tax Due at Time of Sale; Tax Returns and Regulations.

(1) Due dates for payments and tax returns.

(a) The total amount of tax on cash sales, credit sales, installment sales, or sales made on any kind of deferred payment plan shall be due at the moment of the transaction. Except as provided in Rule Chapter 12-24, and Rules 12A-1.005 and 12A-1.070, F.A.C., and this rule, all taxes required under Chapter 212, F.S., to be collected or paid in any month, are due to the Department on the first day of the month following the date of sale or transaction. The payment and return must be delivered to the Department or be postmarked on or before the 20th day of the month following the date of sale or transaction for a dealer to be entitled to the collection allowance and to avoid penalty and interest for late filing. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this rule, a legal holiday means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and s. 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) When quarterly, semiannual, or annual reporting is authorized by the Department pursuant to Section 212.11(1)(c) or (d), F.S., the tax is due the first day of the month following the authorized reporting period and becomes delinquent on the 21st day of that month.

(c) Quarterly, semiannual, or annual filers that remit an excessive tax payment for the period July 1 through June 30 which represents a nonrecurring business activity can request to continue to file their returns quarterly, semiannual, or annually by submitting a written request to the Florida Department of Revenue, Account Management, P.O. Box 6480, Tallahassee, Florida 32314-6480. When a dealer makes a written request to continue on the same filing frequency, the Executive Director or the Executive Director’s designee will determine whether the dealer’s request is based on a nonrecurring business activity, based upon the facts of each case, using the following guidelines:

1. The type of activity. The type of activity, as opposed to the level of activity, that makes that dealer’s remittance unusual for its particular business.

2. The focus of the dealer’s business. A change in the dealer’s business focus will not be considered nonrecurring business activity.

3. The number of occurrences. When the dealer’s remittance amount continues to exceed the maximum amount allowed for a quarterly, semiannual, or annual filing frequency, the remittance will not be considered nonrecurring.

4. Regularity. If the events are so regular that the amounts exceeding the maximum remittance amounts allowed for a quarterly, semi-annual, or annual frequency can be predicted, the remittance will not be considered nonrecurring.

(d)1. If a dealer cannot reasonably compile the information required for an accurate return on a calendar month basis, the dealer may request to file returns and pay tax on an alternative-period basis. The dealer’s request must be in writing and must be submitted to the Florida Department of Revenue, Return Reconciliation/Sales and Use Tax Unit, Mail Stop 1-5730, 5050 West Tennessee Street, Tallahassee, Florida 32399-0162. The written request must contain:

a. The name of the business;

b. The business mailing address;

c. The business partner number;

d. The dealer’s certificate of registration number;

e. A detailed explanation why the dealer cannot reasonably file returns on a calendar month basis; and,

f. The beginning and ending month and day of each requested alternative-reporting period for the current calendar year.

2. When the Department determines that the dealer cannot reasonably compile the information required for an accurate return on a calendar month basis, the Department will notify the dealer in writing that the dealer may report as an alternative-period filer. Alternative-period returns and payments are due on the first day after the end of the alternative-reporting period and become delinquent on the twenty-first day after the end of the alternative-reporting period.

3. Each year, dealers who have been authorized to file on an alternative-reporting basis must provide a calendar of alternative-reporting dates for the upcoming year. The dealer must provide the calendar by December 15, and the calendar must include all alternative-reporting periods for the following calendar year. The annual calendars may be submitted to the Department by any one of the following means:

a. Emailing the calendar to consolidatedSUT@floridarevenue.com;

b. Faxing the calendar to Returns Reconciliation/Sales Tax Unit at (850)245-5883;

c. Mailing the calendar to General Tax Administration, Returns Reconciliation/Sales and Use Tax Unit, Mail Stop 1-5730, 5050 West Tennessee Street, Tallahassee, Florida 32399-0162.

(e) Any dealer who operates two or more places of business in a single county for which returns are required to be filed with the Department may file a single return using a county control reporting number for all places of business located within a single county in lieu of separate returns for each place of business. The dealer may also use this method to file returns in more than one county. A dealer who wishes to report the amounts collected within each county in a single return may obtain a county control reporting number for each county in which returns are required to be filed by submitting a written request to the Florida Department of Revenue, Return Reconciliation, 5050 West Tennessee Street, Tallahassee, Florida 32399-0100. The written request must contain:

1. The name of the business;

2. The business mailing address;

3. Each county in which the dealer will be reporting using a county control reporting number; and,

4. A list, by county, of each dealer's certificate of registration number.

(f) Any dealer who operates two or more places of business for which returns are required to be filed with the Department and maintains records for such places of business in a central office or place may file a consolidated return for all places of business in lieu of separate returns for each place of business. The consolidated return must clearly indicate the amounts collected within each county. An Application for Sales and Use Tax Consolidated Filing Number (Form DR-1CON, incorporated by reference in Rule 12A-1.097, F.A.C.) is provided for qualifying dealers who wish to file consolidated returns. The Department will issue a consolidated account number to qualified dealers.

(g) Each dealer is required to file a return for each tax reporting period even when no tax is due for that reporting period.

(h) The failure of any dealer to secure a tax return for reporting tax due does not relieve the dealer from the requirement to file a return or to remit tax due to the Department. The Department is not authorized to extend the time for any dealer to file any return or pay any tax due.

(i) Payments and returns for reporting tax must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C., when:

1. Payment of the tax is required to be made by electronic means;

2. Any return for reporting taxes is required to be submitted by electronic means; or

3. No tax is due with a return for reporting taxes.

(2) Collection allowance.

(a) A collection allowance is authorized as compensation for the prescribed record keeping, accounting for, and for the timely reporting and remitting of sales and use tax and discretionary sales surtax by electronic means.

(b)1. The collection allowance is computed at the rate of 2.5 percent on the first $1,200 of tax due. No collection allowance is authorized for tax collected in excess of $1,200. The maximum amount of collection allowance authorized for any filing period for any electronic sales and use tax return is $30.

2. Dealers reporting and remitting tax by electronic means on the following returns are entitled to the collection allowance only when the electronic return is timely submitted and the amount due on the return is timely paid by electronic means:

a. Form DR-15EZ, Sales and Use Tax Return;

b. Form DR-15, Sales and Use Tax Return; or

c. Form DR-15CON, Consolidated Summary-Sales and Use Tax Return, and Form(s) DR-7, Consolidated Sales and Use Tax Return.

3. A collection allowance is not authorized for use tax reported on Form DR-15MO, Florida Tax on Purchases.

4. Forms DR-7, DR-15, DR-15CON, DR-15EZ, and DR-15MO are incorporated by reference in Rule 12A-1.097, F.A.C.

(c) Dealers operating more than one place of business and filing a consolidated tax return by electronic means, where the consolidated return provides the monthly business activity for each location, are allowed the collection allowance for each reporting and registered location. Dealers who report tax collected within each county by electronic means using a county-control number are entitled to the collection allowance based upon the total amount reported on the county-control reporting number.

(d) The collection allowance will not be allowed when:

1. The tax reported on an electronic return is not timely paid by electronic means or is delinquent at the time of payment;

2. The required tax return is not submitted by electronic means or is delinquent; or

3. The required electronic tax return filed is incomplete. An “incomplete return” is a return that lacks such uniformity, completeness, and arrangement that the physical handling, verification, or review of the return, or determination of other taxes and fees reported on the return, may not be readily accomplished.

(e)1. Any dealer who files a timely return by electronic means and timely pays the amount due on the return by electronic means may elect to donate the amount of collection allowance that is allowed on that return to the Educational Enhancement Trust Fund. The revenues deposited into this trust fund will go to school districts that have adopted resolutions stating that the funds from this trust fund will be used to ensure that up-to-date technology is purchased for the classrooms in those districts and that teachers are trained in the use of the technology. Dealers who are located outside Florida or whose business is located in a county where the school district has not adopted the required resolution may also elect to donate the amount of collection allowance that is allowed on their return to the trust fund. Funds received from these dealers will be equally distributed to school districts that have adopted the required resolutions.

2. Dealers who elect to donate their collection allowance must make an election on each electronic original return that is timely filed with the Department. The electronic payment required with the return must include the amount of collection allowance to be donated and must be timely paid. Dealers making the election on their electronic return should not enter the amount of collection allowance on the return. Dealers who operate two or more places of business and file an electronic consolidated return, must make the election on the consolidated return (Form DR-15CON, Consolidated Summary-Sales and Use Tax Return) and should not enter the amount of collection allowance on the location returns (Form DR-7, Consolidated Sales and Use Tax Return). The amount of the collection allowance will not be transferred to the Educational Enhancement Trust Fund when a dealer makes an election to donate the amount of its allowed collection allowance but does not include that amount with its payment.

3. When a dealer files an electronic return and timely pays the amount due with the return by electronic means, the election to donate the amount of the collection allowance to the Educational Enhancement Trust Fund may not be rescinded for that return. Dealers are not permitted to file an amended return to make an election to donate the amount of the collection allowance to the trust fund when the election was not made on the original return as filed.

4. When a dealer elects to transfer the collection allowance to the Educational Enhancement Trust Fund, the amount transferred will be the amount remaining after resolution of any tax, interest, or penalty due.

(3) Estimated tax.

(a) Each dealer who paid sales and use tax for the preceding state fiscal year (July 1 through June 30) in an amount greater than $200,000 is required to remit estimated tax, as provided in Section 212.11(4), F.S. The methods to calculate the dealer’s estimated tax liability are provided in Section 212.11(1)(a), F.S.

(b) Any dealer who files a consolidated return to report the business activity of multiple places of business must calculate the estimated tax under one of the methods provided in Section 212.11(1)(a), F.S., for each county or each reporting location, and use the same method to calculate the estimated tax liability on the consolidated return as a whole.

(c) The following are not required to be included in computing the estimated tax liability:

1. Any local option sales tax, such as the tourist development tax levied under authority of Section 125.0104, F.S.; the tourist impact tax levied under the authority of Section 125.0108, F.S.; the convention development tax levied under authority of Section 212.0305, F.S.; or the discretionary sales surtaxes levied under authority of Section 212.055, F.S.

2. The rental car surcharge levied under the authority of Section 212.0606, F.S.

3. Any solid waste fee, such as the new tire fee levied under the authority of Section 403.718, F.S., or the lead-acid battery fee levied under authority of Section 403.7185, F.S.

4. The motor vehicle warranty fee levied under the authority of Section 681.117, F.S.

5. The Miami-Dade County Lake Belt mitigation fee or water treatment plant upgrade fee imposed under Section 373.41492, F.S.

(d) A dealer engaged in the business of selling boats, motor vehicles, or aircraft that made at least one sale of a boat, motor vehicle, or aircraft with a sales price of $200,000 or greater in the previous state fiscal year may qualify for the payment of estimated tax pursuant to Section 212.11(4)(d), F.S. To qualify, such dealer must apply annually to the Department, using a Boat, Motor Vehicle, or Aircraft Dealer Application for Special Estimation of Taxes (Form DR-300400, incorporated by reference in Rule 12A-1.097, F.A.C.). The application must be delivered to the Department or be postmarked on or before October 1 of each year. The Department will grant to all qualified dealers the authority to pay estimated tax pursuant to Section 212.11(4)(d), F.S., for the

following calendar year.

(e) Penalties – Failure to Pay Estimated Tax.

1. Any person who fails to timely remit the amount of estimated tax due under Section 212.11(4), F.S., is subject to a specific penalty of 10 percent of any unpaid estimated tax.

2. Any dealer who files a consolidated tax return and fails to timely remit the amount of estimated tax due based on the consolidated return as a whole, without regard to each business location, is subject to the specific penalty of 10 percent of any unpaid estimated tax. The specific penalty will be calculated based on any unpaid estimated tax due for each reporting business location.

(4) Penalties and interest.

(a) The penalties and interest provided in this subsection apply to the following sales and use taxes, discretionary sales surtax, surcharges, or fees imposed by or administered under Chapter 212, F.S.:

1. Convention development tax;

2. Discretionary sales surtax;

3. Lead-acid battery fee;

4. Miami-Dade County Lake Belt mitigation fee or water treatment plant upgrade fee;

5. Motor vehicle warranty fee (lemon law fee);

6. Rental car surcharge;

7. Sales and use tax;

8. Tax on gross receipts on dry-cleaning;

9. Tax on perchloroethylene;

10. Tourist development tax;

11. Tourist impact tax; and,

12. Waste tire fee.

(b) Failure to Timely File a Return. Any person who fails to timely file any return that is required to report any tax, surtax, surcharge, or fee imposed by or administered under Chapter 212, F.S., is subject to a specific penalty of 10 percent of the amount of tax, surtax, surcharge, or fee shown on the return. This specific penalty may not be less than $50 for each reporting business location.

(c) Failure to Timely Pay. Any person who fails to timely pay any tax, surtax, surcharge, or fee imposed by or administered under Chapter 212, F.S., shown due on a return is subject to a specific penalty of 10 percent of the amount of the tax, surtax, surcharge, or fee shown due on the return. This specific penalty may not be less than $50 for each reporting business location.

(d) Failure to Timely File a Return and to Timely Pay. Any person who files a required return with the Department, but fails to file such return on or before the due date, and fails to timely pay the tax, surtax, surcharge, or fee shown due on the return, is subject to only one specific penalty of 10 percent of the tax, surtax, surcharge, or fee shown due on the return. This specific penalty may not be less than $50 for each reporting business location.

(e) Consolidated Returns and Reporting by County-Control Numbers. The specific penalty for failure to timely file a tax, surtax, surcharge, or fee return, or for failure to timely pay the tax, surcharge, surtax, or fee shown due on a return, is calculated based on each reporting business location. The $50 minimum applies to each reporting business location.

(f) Failure to Disclose. Any person required to make a return or to pay any tax, surtax, surcharge, or fee imposed by or administered under Chapter 212, F.S., who fails to disclose the tax, surtax, surcharge, or fee on a return, is subject to a specific penalty in the amount of 10 percent of the unpaid tax, surtax, surcharge, or fee for each 30 days, or fraction thereof, while the failure to disclose the tax, surtax, surcharge, or fee due continues. This specific penalty may not exceed a total of 50 percent of any such unpaid tax, surtax, surcharge, or fee.

(g) Interest shall accrue on any delinquent tax, surtax, surcharge, or fee imposed by or administered under Chapter 212, F.S., at the rate of interest established pursuant to Section 213.235, F.S., and Rule 12-3.0015, F.A.C. (prorated daily). Interest accrues on the amount due from the date of delinquency until the date on which the tax is paid.

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 125.0104(3)(g), 125.0108(2)(a), 212.03(2), 212.0305(3)(c), 212.031(3), 212.04(3), (4), 212.0506(4), (11), 212.055, 212.06(1)(a), 212.0606, 212.11, 212.12(1), (2), (3), (4), (5), 212.14(2), 212.15(1), 213.235, 213.755, 373.41492, 376.70, 376.75, 403.718, 403.7185, 681.117 FS. History–New 10-7-68, Amended 6-16-72, 10-21-75, 6-9-76, 11-8-76, 2-21-77, 4-2-78, 10-18-78, 12-23-80, 8-26-81, 9-24-81, 11-23-83, 5-28-85, Formerly 12A-1.56, Amended 3-12-86, 1-2-89, 12-19-89, 12-7-92, 10-20-93, 10-17-94,

3-20-96, 4-2-00, 6-19-01, 8-1-02, 4-17-03, 9-28-04, 11-6-07, 9-15-08, 1-17-13, 5-9-13, 6-14-22.

12A-1.057 Alcoholic and Malt Beverages.

(1)(a) Alcoholic beverages, including beer, ale, and wine are taxable.

(b) Except as provided in Section 212.04(4), F.S., a deader will add the tax to the sale price (including any other state and federal taxes) of each sale and may not advertise or hold out to the public in any manner that the dealer will pay all or any part of the tax or will relieve the purchaser from the payment thereof.

(c) However, nothing herein contained shall be construed as prohibiting a dealer from setting his prices on the sale of alcoholic beverages in such a manner as to avoid the handling of pennies, provided each and every one of the dealer's price lists shows the price of the beverage and the amount of tax due as separate items.

(2) Any person desiring to sell such beverages at retail must first qualify as a dealer under Chapter 212, F.S., before applying to the Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation, for a license.

(3) In some instances, it may be impractical for a dealer to separately record the sales price of the beverage and the tax thereon. In such cases, for the privilege of deviating from the requirement of subsection (1) above, a dealer shall remit tax in accordance with one of the methods outlined below, and the dealer's records must substantiate the method so elected.

(a) When the public has not been put on notice through the posting of price lists or signs prominently displayed throughout the establishment that the tax is included in the total charge, package stores which sell no mixed drinks shall remit tax at rate of 6.35 percent of their total receipts. Dealers who sell mixed drinks or a combination of mixed drinks and package goods shall remit the tax at the rate of 6.59 percent of their total receipts.

1. Example: A package store which sells no mixed drinks and whose total receipts are $2,000 would multiply $2,000 by 6.35 percent to compute tax due of $127.00.

2. Example: A dealer who sells drinks or a combination of drinks and package goods and whose total receipts are $2,000 would multiply $2,000 by 6.59 percent to compute tax due of $131.80.

(b) Where it can be demonstrated that the public has been put on notice by means of price lists or signs posted prominently throughout the establishment that the total charge includes tax, the dealer shall report the tax collected by deducting the tax from the total receipts using the methods shown below:

1. Example: A package store which sells no mixed drinks and whose total receipts are $2,000 would divide $2,000 by 1.0635 to compute gross sales of $1,880.58 and tax collected of $119.42.

2. Example: A dealer who sells drinks or a combination of drinks and package goods and whose total receipts are $2,000 would divide $2,000 by 1.0659 to compute gross sales of $1,876.35 and tax collected of $123.65.

(c) Notwithstanding other provisions of this subsection, where the books and records of a dealer can clearly demonstrate without exception a lesser tax rate, the dealer shall apply the lesser tax rate in a manner consistent with paragraphs (a) and (b) of this subsection.

(4)(a) Wine or fortified wine and liquor or distilled spirits provided by distributors or vendors for the purpose of "wine tasting" and "spirituous beverage tasting" as contemplated under the provisions of Chapters 564 and 565, F.S., is exempt from the tax imposed by Chapter 212, F.S.; however, any charge imposed upon the general public for "wine tasting" and "spirituous beverage tasting" is subject to tax.

(b) Except as otherwise provided in paragraph (a), above, beverages or drinks, subject to taxation under Chapter 212, F.S., provided by distributors, vendors, or any other person for the purpose of tasting or promoting any such product are taxable.

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 212.05(1)(a)1.a., (2), (3), (4), 212.06, 212.07(2), (4), 212.08(4)(b), (7)(s), 212.19 FS. History–New 10-7-68, Amended 6-16-72, 1-10-78, 7-16-79, 7-20-82, Formerly 12A-1.57, Amended 12-13-88, 6-4-08, 6-14-22.

12A-1.060 Registration.

(1) Persons required to register as dealers.

(a) Every person desiring to engage in or conduct any one of the following businesses in this state as a "dealer" must register with the Department of Revenue and obtain a separate certificate of registration for each place of business:

1. Sale of admissions or making of any charge for admission to any place of amusement, sport, or recreation or where there is any exhibition or entertainment subject to tax under Section 212.04, F.S.;

2. Sale, lease, let, rental, or granting a license to use tangible personal property subject to tax under Chapter 212, F.S.;

3. Repairs or alterations of tangible personal property subject to tax under Chapter 212, F.S.;

4. Sales of electrical power or energy subject to tax under Section 212.05(1)(e), F.S.;

5. Sales of services subject to tax under Section 212.05(1)(i), F.S.;

6. Sales of prepaid calling arrangements subject to tax under Section 212.05(1)(e), F.S.;

7. Operation of coin-operated amusement machines subject to tax under Section 212.05(1)(h), F.S.;

8. Operation of vending machines subject to tax under Section 212.0515, F.S.;

9. Lease, let, rental, or granting licenses to use any living quarters or sleeping or housekeeping accommodations subject to the transient rental tax imposed under Section 212.03, F.S.

10. Lease, let, rental, or granting a license in real property;

11. Lease or rental of parking or storage space for motor vehicles in parking lots or garages;

12. Lease or rental of docking or storage space in boat docks or marinas;

13. Lease or rental of tie-down or storage space for aircraft;

14. Soliciting, offering, providing, entering into, issuing, or delivering any service warranty subject to tax under Section 212.0506, F.S.;

15. Purchasing diesel fuel for consumption, use, or storage by a trade or business, as provided in Section 212.0501, F.S.;

16. Engaging in any business for which a person desires to obtain self-accrual authorization, as provided in Section 212.183, F.S., or authority to remit sales tax on behalf of its independent distributors or independent sellers, as provided in Section 212.18(3), F.S. See Rule 12A-1.0911, F.A.C.;

17. An air carrier electing to remit tax under the provisions of Section 212.0598, F.S.; or

18. Any person electing to obtain self-accrual authorization in order to pay tax based on the partial exemptions provided in Sections 212.08(8) and (9), F.S.

(b)1. For purposes of this rule, a "dealer" means a dealer, as defined in Section 212.06(2), F.S.

2. The term "dealer" does not include a "nonresident print purchaser." A "nonresident print purchaser" is any person whose only owned or leased property in this state, including property owned or leased by an affiliate, is located at the premises of a printer with which the purchaser has contracted for printing. The property for which the purchaser has contracted for printing must be the final printed product or property from which the printed product is produced. Nonresident print purchasers are not required to register as dealers. For guidelines regarding sales made to nonresident print purchasers, see subsection (5) of Rule 12A-1.027, F.A.C.

(c) The term "dealer" includes a retailer who transacts a substantial number of remote sales or a marketplace provider that has a physical presence in Florida or that makes or facilitates through its marketplace a substantial number of remote sales.

(d) The Department will NOT issue a Certificate of Registration for the purpose of sales and use tax to any out-of-state applicant who requests a certificate for the sole purpose of making tax-exempt purchases of items for resale outside this state when:

1. The applicant has no permanent, licensed place of business in this state; and,

2. The applicant does not make retail sales within this state.

(e) For purposes of this rule, a "place of business" is a location where a dealer engages in an activity or activities described in this subsection. A place of business includes the entire contiguous area in which the dealer carries on an activity or activities that require registration. A dealer that engages in more than one activity requiring registration within a contiguous area generally is required to obtain only one registration certificate for that location. The Department will, however, treat areas within a single contiguous location as separate places of business and require a dealer to obtain separate registration certificates if the activities carried on in those areas are subject to taxation under different provisions of Chapter 212, F.S., the activities are not functionally related, and the efficient administration of the taxes imposed by Chapter 212, F.S., is facilitated by multiple registrations. The Department will permit a dealer to obtain separate registrations for activities carried on at a single contiguous location at the dealer's request if the dealer keeps separate financial records for the activities and the activities are not functionally related. Under no

circumstances will a dealer be subject to more than one penalty for failure or refusal to obtain a registration certificate for a single contiguous location, even if the dealer could be required or permitted to obtain separate registration certificates for multiple activities carried on at the location. The following examples illustrate the application of this rule in determining whether more than one place of business exists at a single contiguous location.

1. A taxpayer operates a shopping mall with 100 retail outlets that are leased to stores and restaurants, parking and common areas, and offices where management and accounting functions are performed. The taxpayer is required to register as a dealer because the rental of real property to the retailers is taxable under Section 212.031, F.S. The entire shopping mall is a single place of business for purposes of registration by the taxpayer.

2. A taxpayer owns a parcel of land with a building and a parking area. The building is divided into three areas. In one area, the taxpayer operates a retail building supply store. In the second area, which has a separate customer entrance, the taxpayer operates a retail store where custom furniture is made and sold. The third area in the building is used as warehouse and office space serving both stores. When ordering inventory, taxpayer combines orders of lumber, hardware, paints, and stains from suppliers for the building supply store and for the furniture store. All inventory is purchased for resale and no records are maintained of whether materials are sold in the building supply store or incorporated into furniture for sale in the furniture store. The taxpayer records sales for both activities in the same accounting records. The parcel of land and the building are a single place of business for registration purposes. Separate registration cannot be required because both the sale of the building supplies and the sale of furniture are taxable under Section 212.05(1), F.S. In addition, because of shared inventory and sales records, the two activities are functionally related. Because the activities are functionally related and separate records are not kept, the taxpayer would not be permitted to treat them as separate places of business for registration purposes.

3. A taxpayer owns a parcel of land with a building and a parking area. The building is divided into three areas. In one area, the taxpayer operates a retail building supply store. In the second area, which has a separate customer entrance, the taxpayer operates a retail store where custom clothing is made and sold. The third area in the building is used as warehouse and office space serving both stores. Separate sales and other accounting records are maintained for the two stores. Unless the taxpayer applies for separate registration certificates, the parcel of land and the buildings are a single place of business for registration purposes. Separate registration cannot be required because both the sale of the building supplies and the sale of clothing are taxable under Section 212.05(1), F.S. If the taxpayer applies for separate certificates of registration for the two activities, the Department then would treat the building supply store and the clothing store as separate places of business because they are not functionally related and separate accounting is done for each.

4. A taxpayer owns a large tract of land. The taxpayer operates an amusement park on part of the land. The taxpayer charges admission for entrance to the park. In addition to amusement rides, the park facilities include restaurants and a gift shop operated by the taxpayer and concession stands throughout the park where concessionaires sell snacks and beverages. The taxpayer also operates a resort hotel adjacent to the amusement park on the same tract of land. Because of its proximity to the park, the hotel caters primarily to park visitors. The hotel contains several restaurants and a gift shop operated by the taxpayer as well as retail stores that taxpayer leases to other merchants. The hotel also contains offices from which the taxpayer manages the entire amusement park and hotel complex and centralized storage areas serving the entire complex. The taxpayer orders food for all its restaurants and other materials and supplies on combined purchase orders, regardless of where in the park and hotel complex the food, materials, or supplies will be used. Employees may be assigned to work anywhere throughout the entire park and hotel complex as needed. The taxpayer treats the entire complex as a single business for purposes of financial accounting. The taxpayer would be entitled to treat the entire tract of land with amusement park and hotel facility as a single place of business for registration purposes. Even though the taxpayer’s activities are taxable pursuant to several different sections of Chapter 212, F.S., all of the activities are functionally related parts of a single tourism/resort business under the taxpayer’s operational methods and accounting practices.

5. A taxpayer owns a large tract of land. The taxpayer operates an amusement park on part of the land. The taxpayer charges admission for entrance to the park. In addition to amusement rides, the park facilities include restaurants and a gift shop operated by the taxpayer and concession stands throughout the park where concessionaires sell snacks and beverages. The taxpayer also operates a resort hotel adjacent to the amusement park on the same tract of land. Because of its proximity to the park, the hotel caters primarily to park visitors. The hotel contains several restaurants and a gift shop operated by the taxpayer as well as retail stores that taxpayer leases to other merchants. The hotel also contains offices from which the taxpayer manages the entire amusement park and hotel complex and centralized storage areas serving the entire complex. The taxpayer orders food for amusement park restaurants and other materials and supplies for the amusement park separately from food, materials, and supplies for the hotel complex.

Employees may be assigned to work anywhere in the entire amusement park or anywhere in the hotel complex but no employee is assigned to work in both areas. The taxpayer treats the amusement park as one business and the hotel complex as a separate business for purposes of financial accounting. The taxpayer would be entitled to treat the entire tract of land with amusement park and hotel facility as a single place of business for registration purposes. Even though the taxpayer's activities are taxable pursuant to several different sections of chapter 212, F.S., and the amusement park and hotel are not operated as functionally related activities, requiring two registration certificates would not facilitate efficient administration of Chapter 212, F.S. If the taxpayer applied for two registration certificates, the Department then would treat the amusement park and the hotel complex as separate places of business because they are not functionally related and separate accounting is done for each.

6. A taxpayer owns a large tract of land. The taxpayer operates an amusement park on part of the land. The taxpayer charges admission for entrance to the park. In addition to amusement rides, the park facilities include restaurants and a gift shop operated by the taxpayer, concession stands throughout the park where concessionaires sell snacks and beverages, and maintenance and storage buildings. The taxpayer manages the amusement park activities, including purchasing and payroll functions from taxpayer's corporate headquarters in another city. The taxpayer also owns a resort hotel adjacent to the amusement park on the same tract of land. The hotel contains several restaurants and retail stores that are leased to other merchants. Because of its proximity to the park, the hotel caters primarily to park visitors. The taxpayer has entered into a management agreement with a third party management company. The management company is responsible, under its contract with the taxpayer, for all aspects of operating the hotel, including purchasing, paying suppliers, personnel, leasing retail stores to merchants, financial record keeping, and tax matters. The management company collects sales taxes in regard to the hotel operations and remits those taxes on taxpayer's behalf to the state. All records in regard to the hotel operations are maintained by the management company at the hotel premises. The taxpayer will be required to treat the amusement park and the hotel as separate places of business. The two activities are not functionally related in terms of operations or accounting. In addition, because a separate return will be prepared and filed for the hotel operations, it will facilitate administration of Chapter 212, F.S., if a separate registration and reporting number is assigned.

7. A taxpayer operates a manufacturing facility and a retail outlet on the same tract of land. Statutes have been enacted to provide sales and use tax exemptions to businesses manufacturing the type of product the taxpayer manufactures. Those statutes require the department to make annual reports to the legislature and the office of the governor on the volume of sales made by manufacturers claiming the exemption. The department will require separate registration of the manufacturing business to facilitate compiling the required annual report.

(2) How to register as a dealer.

(a) Registration with the Department for the purposes of sales and use tax is available by using one of the following methods:

1. Registering through the Department's website www.floridarevenue.com using the Department's eServices.

2. Filing a Florida Business Tax Application (Form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.), with the Department, as indicated on the registration form.

(b) A separate application is required for each place of business. If a business previously submitted Form DR-1 to the Department and holds an active certificate of registration or reemployment tax account, the business may use an Application for Registered Businesses to Add a New Florida Location (Form DR-1A, incorporated by reference in Rule 12A-1.097, F.A.C.) in the following circumstances:

1. To register an additional business location or Florida rental property, or

2. To update a registered location that has moved from one Florida county to another.

(c) Each application submitted to the Department must contain sufficient information to facilitate the processing of the application.

(3) Registration of marketplace providers and remote sellers.

(a) Marketplace providers and remote sellers, as defined in Rule 12A-1.103, F.A.C., must register electronically with the Department to collect and remit sales tax and discretionary sales surtax and obtain a separate certificate of registration for each marketplace and each place of business in Florida. A marketplace is deemed a separate place of business. A separate application is required for each place of business located within Florida. Out-of-state businesses can submit one application for all out-of-state locations.

(b) Electronic registration can be completed by going to floridarevenue.com/taxes/registration. This applies to persons required to register pursuant to subparagraphs 1. and 2. below.

1. The following persons who have a physical presence in Florida must register using the Department's electronic *Florida*

Business Tax Application (Form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.).

a. Marketplace providers.

b. Marketplace sellers who make sales outside of the marketplace.

2. The following persons who do not have a physical presence in Florida must register electronically using the Department's electronic registration application for marketplace providers and marketplace sellers. The information required in this electronic application is provided in the *Florida Business Tax Application for Marketplace Providers and Remote Sales* (Form DR-1MP, effective 01/22, hereby incorporated by reference, http://www.flrules.org/Gateway/reference.asp?No=Ref-14233) and available on the Department's website at floridarevenue.com/taxes/sut. This form is provided for informational purposes only.

a. Marketplace providers who make or facilitate a substantial number of remote sales.

b. Marketplace sellers who make a substantial number of remote sales outside of the marketplace.

c. Remote sellers, as defined in Rule 12A-1.103, F.A.C.

(4) Registration of transient accommodations.

(a) For purpose of this rule, a "transient accommodation" shall have the same meaning as that term is defined in paragraph (3)(f) of Rule 12A-1.061, F.A.C.

(b)1. Any person exercising a taxable privilege of engaging in the business of renting, leasing, letting, or granting licenses to others to use transient accommodations is required to register as a dealer and obtain a separate dealer's certificate of registration for each place of business where transient accommodations are provided.

2. The agent, representative, or management company for a time-share resort which rents, leases, lets, or grants licenses to others to use time-share periods under written agreement(s) with time-share period owners is presumed to be the dealer who is required to be registered. The agent, representative, or management company may collectively register the time-share units, even if the agent, representative, or management company may not rent, lease, let, or grant licenses to use to the transient public for each and every time-share period at such resort.

(c)1. Any person who exclusively enters into a bona fide written lease, as provided in subsection (17) of Rule 12A-1.061, F.A.C., for continuous residence for periods longer than six months to lease, let, rent, or grant a license to others to use, occupy, or enter upon any transient accommodation is NOT required to register with the Department.

2. Any transient accommodation that is leased under the terms of a bona fide written agreement for continuous residence for longer than six months in duration is NOT required to be registered with the Department by the owner or the owner's representative.

(d) Any agent, representative, or management company may collectively register transient accommodations, including timeshare units, under the following conditions:

1. The agent, representative, or management company holds a valid dealer's certificate of registration for each place of business;

2. The agent, representative, or management company is authorized by means of a written agreement with the property owner to collect rental charges or room rates due on any transient accommodations; and,

3. The written agreement contains the following provisions acknowledged by the property owner:

a. The property owner is ultimately liable for any sales tax due the State of Florida on rentals, leases, lets, or licenses to use the owner's property; and,

b. In the event that the State is unable to collect any taxes, penalties, and interest due from the rental, lease, let, or license to use the owner's property, a warrant for such uncollected amount will be issued and will become a lien against the owner's property until satisfied.

(e)1. To collectively register transient accommodations that are located in a single county, the agent, representative, or management company holding a dealer's certificate of registration may file an Application for Collective Registration of Living or Sleeping Accommodations (Form DR-1C, incorporated by reference in Rule 12A-1.097, F.A.C.). A separate Form DR-1C is required for each county.

2. The agent or management company must provide the following information for each property, other than a time-share unit, which is to be collectively registered:

a. Property owner's name;

b. Property owner's federal identification number, social security number, or individual taxpayer identification number;

c. Property owner's mailing address;

d. Location address of each property; and,

e. An indication of whether the property is located within a city's limits.

3. The agent or management company must provide the following information for each time-share unit, which is to be collectively registered:

a. Designation of the time-share unit;

b. Time-share unit's location address; and,

c. An indication of whether the time-share unit is located within a city's limits.

4. In lieu of completing all required information on Form DR-1C for each unregistered property or time-share unit, all information required for each property or time-share unit may be submitted to the Department in a schedule attached to the completed "Agent/Representative/Management Company Sales and Use Tax Registration Information" section of Form DR-1C.

5. A certificate of registration will be issued to the property owner for each property that is not a time-share unit and mailed to the agent's address. For time-share units, a certificate of registration will be issued and mailed to the agent or management company.

6. 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 are not subject to disclosure as public records. Collection of an individual's social security number is authorized under state and federal law. Visit the Department's website 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.

(5) Registration of exhibitors.

(a) For purposes of this rule, the following definitions are provided:

1. An "exhibitor" means a person who enters into a written agreement authorizing the display by that person of tangible personal property or services at a convention or trade show.

2. A "trade show or convention" is a meeting of limited duration of individuals with organizational ties or similar interests, one of the purposes of which is the displaying of products or services or sharing information on them, without a major purpose of making retail sales of tangible personal property.

3. A "sale" is as defined in Section 212.02(15), F.S.

4. A "retail sale" is as defined in Section 212.02(14), F.S.

(b) Any exhibitor who displays tangible personal property or services at a convention or trade show is required to register as a dealer and collect and remit tax on sales of taxable property or services subject to Florida sales tax when:

1. The written agreement authorizes an exhibitor to make retail sales in this state of taxable tangible personal property or services;

2. The written agreement authorizes an exhibitor to make remote sales, pursuant to Section 212.0596, F.S.; or

(c) An exhibitor who does not carry on any other activity in Florida that requires registration is NOT required to register as a dealer to collect sales tax when:

1. The written agreement prohibits the sale of taxable tangible personal property or taxable services; or

2. The written agreement provides that the exhibitor shall only make sales for the purposes of resale and the exhibitor obtains a copy of the purchaser's Annual Resale Certificate, as provided in Rule 12A-1.039, F.A.C.

(6) Cash deposits, surety bonds, or letters of credit. The Department will utilize the criteria in this subsection when it requires a cash deposit, surety bond, or irrevocable letter of credit as a condition to any person obtaining or retaining a dealer's certificate of registration. Nothing in this subsection prohibits the Department from pursuing any other authorized means to collect a tax or fee liability. Nothing in this subsection requires the Department to permit the posting of a cash deposit, surety bond, or irrevocable letter of credit instead of revoking or refusing to issue a dealer's certificate of registration. This subsection does not apply to a person currently in compliance with a written agreement with the Department regarding its tax or fee liabilities and obligations.

(a) Definitions. For the purposes of this subsection:

1. The word "security" means cash deposits, surety bonds, or irrevocable letters of credit. Bonds required under this subsection must be issued by a surety company authorized to do business in this state as a surety. Irrevocable letters of credit must be issued by a bank authorized to do business in the state as a bank and must be engaged by a bank as an agreement to honor demands for payment.

2. "Tax or fee liability" means any liability for any of the following taxes or fees, penalty, or interest:

a. Any sales or use tax, discretionary sales surtax, or local option tax imposed under Chapter 212, F.S.;

b. Any tourist development tax levied under Section 125.0104, F.S., or tourist impact tax levied under Section 125.0108, F.S.;

c. The rental car surcharge levied under Section 212.0606, F.S.;

d. Any solid waste fee, such as the new tire fee levied under Section 403.718, F.S., or the lead-acid battery fee levied under Section 403.7185, F.S.;

e. The motor vehicle warranty fee levied under Section 681.117, F.S.;

f. Any penalty or interest imposed under Section 212.12(2) or 213.235, F.S.;

(b) Qualifying Events. Security will be required when the Department determines that any of the following qualifying events apply:

1. The person owns or manages a business that has no permanent business location in Florida and there is evidence that the person will fail to remit taxes to the state;

2. The person operates from a temporary location in Florida for less than six months in any consecutive twelve-month period, and there is evidence that the person will fail to remit taxes to the state;

3. The person has had a previous certificate of registration revoked;

4. The person failed to comply with the provisions of a judgment, settlement agreement, closing agreement, stipulated payment agreement, or consent agreement entered into with the Department;

5. A warrant is currently unsatisfied in whole or in part; or

6. The person is seeking an additional registration and has an outstanding liability of $2,500 or more.

(c) Security Amount Determination.

1. When the Department requires a person with an existing certificate of registration to post security, the required security will be equal to the person's total estimated tax or fee liability, as determined by the Department, for the preceding twelve calendar months, plus the person's outstanding tax or fee liability.

2. When the Department requires a person applying for a new certificate of registration to post security, the following criteria will be used to determine the amount required, unless the specific facts and circumstances warrant a higher amount not to exceed the sum of the person's total estimated tax or fee liability, as determined by the Department, for twelve calendar months, plus the person's outstanding tax or fee liability:

a. If the person is or will be:

(I) A monthly filer, security equal to six months' estimated tax or fee liability will be required.

(II) A quarterly filer, security equal to nine months' estimated tax or fee liability will be required.

(III) A semiannual or annual filer, security equal to one year of the estimated tax or fee liability will be required.

b. When considering specific facts and circumstances to determine if additional security will be required under this subparagraph, the Department will consider:

(I) The value of the person's real property holdings in Florida;

(II) The value of the person's assets in Florida, including the liquidity or mobility of the assets; or

(III) Outstanding money judgments against the person.

(d) Procedural Issues Regarding the Security Requirement.

1. When the Department determines that security is required as a condition to obtaining a dealer's certificate of registration, it will send written notice of intent to deny registration to the person at the person's last known address as it appears in the Department's records. When the Department determines that security is required as a condition to retaining a dealer's certificate of registration, it will send a notice of intent to revoke registration to the person at the person's last known address as it appears in the Department's records. The person must either post security or send a written request for a conference to the Department. The security or written request for a conference must be received by the Department within 30 consecutive calendar days after the date of the notice.

2.a. A request for a conference must be made directly to the office designated in the notice and must:

(I) State the reasons for objecting to the requirement to post security;

(II) Request an informal conference with the Department regarding the requirement to post security;

(III) Include a copy of the notice informing the person of the requirement to post security; and,

(IV) Be mailed, hand delivered, or faxed to the office address or fax number provided in the notice of the requirement to post security.

b. Requests postmarked, hand delivered, or faxed more than 30 consecutive calendar days after the date of issuance of the notice will be deemed late filed and shall result in the forfeiture of the person's right to such conference, unless the person has timely

secured a written extension of time within which to file a request for a conference.

c. An extension of time in which to request a conference may be secured by mailing, hand delivering, or faxing a written request to the office designated in the notice. Each extension of time will be for 30 consecutive calendar days. Within a 30 consecutive calendar day extension period, the person may submit a request in writing to the office designated in the notice for an additional 30 consecutive calendar day extension within which to request a conference.

d. Failure to mail, hand deliver, or fax a written request for a conference or a written request for an additional 30 consecutive calendar day extension within a pending extension period shall result in forfeiture of the right to such conference.

e. If a conference is requested, it will be held at the earliest convenience of both the person and the Department, but it will not be held more than 60 consecutive calendar days after the notice, unless specifically agreed to in writing by the Department.

f. If a request for a conference is not timely made, the right to seek a conference is waived.

g. The 30 consecutive calendar days provided for requesting a conference may be waived by the person to expedite resolution of the issue.

h. The person has the right to request an administrative hearing, to be conducted in accordance with Section 120.57, F.S. and Rule Chapter 28-106, F.A.C., if the notice of the requirement to post security becomes final. For this purpose, the Department's notice will become final if:

(I) An agreement is not reached after the informal conference;

(II) A written request for a conference or a written request for an extension of time for requesting a conference is not timely filed; or

(III) The right to an informal conference is waived.

3. If the person fails to post security or to secure review of the requirement to post security, the Department will deny the application for a certificate of registration, will revoke any existing certificate, and request that the Department of Legal Affairs proceed by injunction to prevent such person from doing business in the state until the appropriate security is posted.

4. Any security posted under this subsection must solely benefit the Florida Department of Revenue, and must be conditioned upon the timely compliance with the person's tax or fee liability and the terms and conditions of any compliance agreement entered into between the person and the Department.

5. Any person posting security in the form of a cash deposit must complete a Certificate of Cash Deposit or Cash Bond (Form DR-17A, incorporated by reference in Rule 12A-1.097, F.A.C.). Suggested formats for the irrevocable letter of credit and the surety bond are available on the Department's website www.floridarevenue.com.

6. An irrevocable letter of credit must contain an expiration date that is at least eighteen months after the stated date of issuance.

7. An irrevocable letter of credit or surety bond must contain a provision that requires the issuing bank or surety company to notify the Department of the expiration or termination of the irrevocable letter of credit or surety bond by certified mail at least 60 days prior to the expiration or termination.

8. If security is still required under this subsection and an irrevocable letter of credit or surety bond expires or is terminated without substitution, the Department will revoke the applicable person's existing certificate and request that the Department of Legal Affairs proceed by injunction to prevent such person from doing business in the state until substitute security is posted.

9. No interest will be paid by the state to any person for the deposit of any security under this subsection.

(e) Insufficiency of Security. If the Department determines that the amount of any existing security is insufficient to ensure payment of the amount of the tax or fee liability, penalties, and interest for which the person is or may become liable, or if the amount of the security is reduced or released whether by judgment rendered or by use of the security to pay the delinquent tax or fee liability, penalties**,** or interest, the Department will provide written notification to the person of the revised amount of security required. The person is required to file an additional security in the amount required by the Department, or request a conference within 30 consecutive calendar days, failing which the Department will revoke any existing registration. If a new security is furnished, the Department, as appropriate, will cancel, surrender, or discharge the previous security, for which the new security is substituted.

(f) Security Duration. If the person complies with its tax or fee liability for a period of twelve consecutive months, upon written request, the Department will release the surety bond or irrevocable letter of credit. A person requesting the return of a cash deposit must file Form DR-29, Application for Release or Refund of Security (incorporated by reference in Rule 12A-1.097, F.A.C.). If the person ceases operation of the business during the time the security is being held by the Department, a written request must be made within 90 days of ceasing operations, requesting the return of the deposit or release of the surety bond or irrevocable letter of credit.

The Department will offset any reimbursements of security under this subsection against any outstanding tax or fee liability of the person.

(g) Delinquent Payments. If any person is delinquent more than 30 days in the payment of its tax or fee liability, the Department will initiate an action to seek release of moneys from the security held by the Department.

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 119.071(5), 212.03(1), (2), 212.04(4), 212.0596, 212.05965, 212.06(2), 212.14(4), 212.16(1), (2), 212.18(3) FS. History–New 10-7-68, Amended 1-7-70, 6-16-72, 3-21-77, 5-10-77, 10-18-78, Formerly 12A-1.60, Amended 6-10-87, 1-2-89, 11-12-90, 3-17-94, 1-2-95, 3-20-96, 11-30-97, 4-2-00, 6-19-01, 10-2-01(1), 10-2-01(1), 8-1-02, 4-17-03, 6-12-03, 6-4-08, 9-1-09, 6-14-10, 6-28-10 (6), 6-28-10 (3), 7-28-15, 1-17-18, 3-25-20, 6-14-22.

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

(1)(a) Every person who rents or leases any real property or who grants a license to use, occupy, or enter upon any real property is exercising a taxable privilege unless such real property is:

1. Assessed as agricultural property under Section 193.461, F.S.

2. Used exclusively as dwelling units.

3. Property subject to tax on parking, docking, or storage space under Section 212.03(6), F.S.

4. A public or private street or right-of-way occupied or used by a utility for utility purposes.

5. A public street or road which is used for transportation purposes.

a. Tolls imposed exclusively for the right to travel on turnpikes, expressways, bridges, and other public roadway are payments for the use of the public roadway and are thus exempt. Example: The toll charged by a city to the general public for the right to cross a bridge is a payment for transportation purposes; therefore, it is exempt.

b. However, a charge for the right to use a public or private roadway for non-transportation purposes is fully taxable. Example: A civic organization that is not exempt from sales tax contracts with a city to have certain streets and sidewalks blocked from traffic to conduct its annual festival. The privilege granted by the city to the civic organization for the use of the streets and sidewalks constitutes a license to use real property for non-transportation purposes. Therefore, any charge by the city to the civic organization for the use of streets and sidewalks is taxable.

6.a. Property used at an airport exclusively for the purpose of aircraft landing or aircraft taxiing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling aircraft. See subsection (3).

b. Property which is used by an airline for loading or unloading passengers onto or from an aircraft is exempt. This property includes: common walkways inside a terminal building used by passengers for boarding or departing from an aircraft, ticket counters, baggage claim areas, ramp and apron areas, and departure lounges (the rooms which are used by passengers as a sitting or gathering area immediately before surrendering their tickets to board the aircraft). Departure lounges commonly known as VIP lounges, or airport clubs which are affiliated with an airline or a club which requires a membership or charge or for which membership or usage is determined by ticket status are not included as property exempt from tax. The lease or license to use passenger loading bridges (jetways) and baggage conveyor systems comes under this exemption, provided that the jetways and baggage conveyor systems are deemed real property.

(I) In order for the jetways and baggage conveyors to be deemed real property, the owner of these items must also be the owner of the land to which they are attached, and must have had the intention that such property become a permanent accession to the realty from the moment of installation. The items shall not be considered real property if the owner, when the owner is not the airport, retains title to the items after the purchase/installation indebtedness has been paid in full.

(II) Any operator of an airport, such as an airport authority, which is the lessee of the land on which the airport has its situs is, for the purpose of this sub-subparagraph, deemed the owner of such land.

c. Real property used by an airline for purposes of loading or unloading passengers or property onto or from an aircraft which is exempt from tax includes: office areas used to process tickets, baggage processing areas, operations areas used for the purpose of the operational control of an airline’s aircraft, and air cargo areas.

(I) If any portion of the above property is used for any other purpose, it is taxed on a pro-rata basis, which shall be determined by the square footage of the portion of the areas in the airport that are used by an airline exclusively for the purpose of loading or unloading passengers or property onto or from aircraft (which areas shall be the numerator) compared to the total square footage of such areas used by the airline (which areas shall be the denominator).

(II) Example: An airline leases a total of 3,000 square feet from an airport authority. The airline uses the space as follows: 1,000 square feet are used to process tickets and check in the passengers’ luggage; 1,000 square feet are used for the passengers’ departure lounge; and 1,000 square feet are used for the management office and the employees’ lounge. The 1,000 square feet used to process tickets and check in the passengers’ luggage is exempt; the 1,000 square feet used as the passengers’ departure lounge is also exempt; and the 1,000 square feet used as the management office and employees’ lounge is taxable. Therefore, a total of 2,000 square feet is exempt because that portion of the total space leased by the airline is used exclusively for the purposes of loading or unloading passengers or property onto or from an aircraft. However, the total amount used as office space and the employees’ lounge (i.e., 1,000 square feet) is taxable, because that portion of the space leased by the airline is not used exclusively for the purposes of loading or unloading passengers or property onto or from an aircraft.

d. Real property used for fueling aircraft is taxable when the fueling activities are conducted by a lessee or licensee which is not

an airline. However, the charge made to an airline for the use of aprons, ramps or other areas used for fueling aircraft is exempt.

7.a. Property used at a port authority exclusively for the purpose of oceangoing vessels or tugs docking, or such vessels mooring on property used by a port authority for the purpose of loading or unloading passengers or cargo onto or from such vessels, or property used at a port authority for fueling such vessels. See subsection (2).

b. The term “port authority” means any port authority created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law.

8. Property leased, subleased, or rented to a person providing food and drink concessionaire services within the premises of a movie theater, a business operated under a permit issued pursuant to Chapter 550, F.S., (dog and horse racing), or any publicly owned arena, sports stadium, convention hall, exhibition hall, auditorium, or recreational facility; however, licenses to use such spaces are subject to sales tax.

9. Recreational property or other common elements of a condominium when subject to a lease between the developer or owner of the condominium complex and the condominium association in its own right or as the agent for the owners of individual condominium units or the owners of individual condominium units. This exemption applies only to the lease payments of such property and any other use of such property by either the owner, developer, or the association shall be fully subject to tax.

10. Classified as a type of property for which another exemption may apply pursuant to Section 212.031, F.S.

(b)1. A person providing retail concessionaire services involving the sale of food and drink or other tangible personal property within the premises of an airport shall be subject to tax on the rental of such real property.

2. A person providing retail concessionaire services involving the sale of food and drink or other tangible personal property within the premises of an airport shall not be subject to the tax on any license to use such property. For purposes of this subparagraph, the term “sale” shall not include the leasing of tangible personal property.

3. For purposes of this rule, the term “retail concessionaire,” which may be either a lessee or licensee, shall mean any person who makes sales of food or drink directly to the general public within the premises of a movie theater, a business operated under a permit issued pursuant to Chapter 550, F.S., or any publicly owned arena, sports stadium, convention hall, exhibition hall, auditorium, or recreational facility, or who makes sales of food, drinks or other tangible personal property directly to the general public within the premises of an airport. With regard to airports, any persons which contract to service or supply tangible personal property for airline operations are considered to be providing aircraft support services and are not concessionaires for purposes of this rule.

(c) Real property used as an integral part of the performance of qualified production services shall not be subject to tax. The term “qualified production services” means any activity or service performed directly in connection with the production of a qualified motion picture. The term “qualified motion picture” means all or any part of a series of related images, either on film, tape, or other embodiment, including, but not limited to, all items comprising part of the original work and film-related products derived therefrom as well as duplicates and prints thereof and all sound recordings created to accompany a motion picture, which is produced, adapted, or altered for exploitation in, on, or through any medium or device and at any location, primarily for entertainment, commercial, industrial, or educational purposes and includes:

1. Photography, sound and recording, casting, location managing and scouting, shooting, creation of special and optical effects, animation, adaptation (language, media, electronic or otherwise), technological modifications, computer graphics, set and stage support (such as electricians, lighting designers and operators, greensmen, prop managers and assistants, and grips), wardrobe (design, preparation, and management), hair and make-up (design, production, and application), performing (such as acting, dancing, and playing), designing and executing stunts, coaching, consulting, writing, scoring, composing, choreographing, script supervising, directing, producing, transmitting dailies, dubbing, mixing, editing, cutting, looping, printing, processing, duplicating, storing, and distributing;

2. The design, planning, engineering, construction, alteration, repair, and maintenance of real or tangible personal property including stages, sets, props, models, paintings, and facilities principally required for the performance of those services listed in subparagraph 1.; and,

3. Property management services directly related to property used in connection with the services described in subparagraphs 1. and 2.

4. A statement similar to the following should be presented to the lessor by the motion picture lessee at the time the parties execute the lease.

LESSEE/LICENSEE/TENANT
BLANKET LEASE EXEMPTION CERTIFICATE

This is to certify that all real property leased, licensed, or rented by (NAME OF LESSOR) on or after (DATE) to (NAME OF MOTION PICTURE LESSEE, LICENSEE, or TENANT) is or was leased, licensed, or rented to be used as an integral part of the performance of qualified production services, exempt from sales or use tax under the provisions of Section 212.031(1)(a)9., F.S.

This lease exemption certificate is to continue in force unless revoked by lessee in writing, addressed to the lessor named in this agreement.

LESSEE/LICENSEE/TENANT _____
ADDRESS _____
SALES TAX NUMBER (IF REGISTERED) _____
SIGNATURE OF LESSEE/LICENSEE/TENANT _____ DATE _____
PRINT NAME _____

5. When the property is used for any purpose other than the production of a qualified motion picture and the lease exemption certificate has been provided to the lessor, tax should be accrued and remitted to the Department of Revenue by the motion picture lessee, licensee, or tenant on the lease of the real property.

(d) “Real property” means the surface land, improvements thereto, and fixtures, and is synonymous with “realty” and “real estate.”

(e) “License,” with reference to the use of real property, means the granting of a privilege to use or occupy a building or parcel of real property for any purpose.

1. Example: An agreement whereby the owner of real property grants another person permission to install and operate a full service coin-operated vending machine, coin-operated amusement machine, coin-operated laundry machine, or any like items, on the premises is a license to use real property. The consideration paid by the machine owner to the real property owner for the license to use the real property is taxable. See Rule 12A-1.044, F.A.C., for the definitions of “amusement machine operator” and “vending machine operator.”

2. Example: An agreement between the owner of real property and an advertising agency for the use of real property to display advertising matter is a license to use real property. The consideration paid by the advertising agency to the real property owner for the license to use the real property is taxable.

(2) The lease or rental of docking or storage spaces for boats at boat docks or marinas is taxable under Section 212.03(6), F.S.

(3) The lease or rental of tie-down or storage space for aircraft at airports is taxable under Section 212.03(6), F.S.

(4)(a) The tenant or person actually occupying, using, or entitled to use any real property from which rental or license fee is subject to taxation under Section 212.031, F.S., shall pay the tax to his immediate landlord or other person granting the right to such tenant or person to occupy or use such real property.

(b) The tax shall be paid on all considerations due and payable by the tenant or other person actually occupying, using, or entitled to use any real property to his landlord or other person for the privilege of use, occupancy, or the right to use or occupy any real property for any purpose.

(c) Ad valorem taxes paid by the tenant or other person actually occupying, using, or entitled to use any real property to the lessor or any other person on behalf of the lessor, including transactions between affiliated entities, are taxable.

(d) Common area maintenance charges paid by a tenant to the lessor for the privilege or right to use or occupy real property are taxable.

(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 (5.5%) sales tax	111.65
Reimbursement for one-fifth share of utilities on which tax was paid by Landlord ($1,900 - $150 * 20%)	350.00
Total Amount Due	$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 utilities not taxed (total utilities $418.00, less utilities on which Landlord paid tax, 350.00)	68.00
Total subject to tax	$2,068.00
Florida (5.5%) sales tax	113.74
Reimbursement for one-fifth share of utilities on which tax was paid by Landlord	350.00
Total Amount Due	$2,531.74

(f) The tax shall be due and payable at the time of the receipt of the rental or license fee payment by the lessor or other person who receives the rental or payment. The owner, lessor, or person receiving the rent or license fee shall remit the tax to the Department at the times and in the manner provided in Rule 12A-1.056, F.A.C.

(g)1. The amount charged by a lessor to a lessee to cancel or terminate a lease agreement is subject to tax if the lessor records such charge as rental income in its books and records. If such charge is not recorded as rental income by the lessor, then such charge is not considered a payment for the lease of the real property but as a payment to cancel or terminate the lease agreement.

2. Notwithstanding the provisions of subparagraph 1., above, if the amount paid by a lessee to a lessor to cancel or terminate a lease agreement is recorded as a rental expense in the lessee's books and records, then such payment is subject to tax. However, if the lessee does not record that payment as a rental expense, then such payment is not considered a payment for the lease of the real property but as a payment to cancel or terminate the agreement, and is not subject to tax. If the lessee records the payment as a rental expense but does not remit tax to the lessor on such payment, then the lessee is required to remit the tax on such charge directly to the Department of Revenue. The lessee is required to remit the tax on Form DR-15, Sales and Use Tax Return, if a registered dealer, or if unregistered, the lessee is required to remit the tax on Form DR-15MO, Out-of-State Purchase Return. Forms DR-15 and DR-15MO are incorporated by reference in Rule 12A-1.097, F.A.C.

3. Should the lessor or lessee record the payment as rental income or expense, respectively, but provide sufficient documentation, such as a lease or other tangible evidence, to establish that the payment is for other than the use of the real property, then such payment is not subject to tax.

4. Should the lessor or lessee record the payment as other than rental income or rental expense, respectively, but sufficient documentation exists, such as a lease or other tangible evidence, to establish that the payment was additional payment for the use of the real property, then such payment is subject to tax.

(5) Only one tax on the rental or license fee payable from the occupancy or use of any real property from which the rental or license fee is subject to taxation under Section 212.031, F.S., shall be collected, and the tax shall not be pyramided by a progression of transactions; however, the amount of tax due the State of Florida shall not be decreased by any such progression of transactions.

(6) Each place of business is required to be registered separately by the owner, landlord, agent, or other persons who collect or receive rents or license fees on behalf of owners or lessors. See Rule 12A-1.060, F.A.C.

(7)(a) Where a tenant or person occupying, using, or entitled to use any real property which is subject to tax sublets or assigns and collects rentals or license fees on a taxable portion of the leased or licensed premises, such tenant or other person shall be required to register as a dealer and collect and remit the tax on all such sub-rentals or assignments.

(b) Notwithstanding the provisions of paragraph (a), when space is subleased to a convention or industry trade show in a convention hall, exhibition hall, or auditorium, whether publicly or privately owned, the sponsor who holds the prime lease is subject to tax on the prime lease and the sublease shall be exempt.

(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 $22.00 rental tax. Tenant subleases 100 square feet, or one half, of the space to Subtenant for $300.00 and collects $16.50 tax which he remits to the State, less a credit of $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 5.5 percent of this amount is $11.00.)

(9) If a tenant or other person sublets or assigns his interest in all of the leased or licensed premises, or retains only an incidental portion of the entire premises, then such tenant or other person may elect not to pay tax on the prime lease or license, provided that such tenant or other person shall register as a dealer and collect and remit tax due on the sub-rentals or assignments and pay the tax due on the portion of the rental charges or license fees pertaining to any taxable space which he retains. If the tenant or licensee elects not to pay the tax to his landlord, or other person granting the right to occupy or use such real property, he should extend to his landlord or such other person a resale certificate.

(10) When the owner of a business, or the operator of a business who is a lessee or licensee, provides floor space to any person, and in addition thereto and in connection therewith also provides certain services to such person such as display, delivery, wrapping, packaging, telephone, credit, collection, or accounting, the amount charged by the lessee or licensee to such person constitutes the lease or rental of or license to use or occupy real property, and where the charges for such services are not separately stated in the agreement and on the invoices or other billings, the total consideration paid under the agreement is taxable. Where the charges for such services are separately stated in the agreement and on the invoices or other billings, only those charges for floor space are taxable. When the operator of a business is a lessee or licensee, he may take credit in accordance with the provisions of subsection (8) of this rule, for the tax paid on the floor space which he subleases or assigns.

(11) When the operator of a business, who may be the owner or prime lessee, provides space to an independent operator or licensee, the operator shall collect and remit tax on the total consideration paid by the independent operator or other person for the right of such person to occupy or use such space.

(12) When a tenant or other person pays insurance for his own protection, the premium is not regarded as rental or license fee consideration, even though the landlord or other person granting the right to occupy or use such real property is also protected by the coverage. However, any portion of the premium which secures the protection of the landlord or person granting the right to occupy or use such real property and which is separately stated or itemized is regarded as rental or license fee consideration and is taxable.

(13) When the rental or lease of an interest in real property or a license to use or occupy any real property includes areas which are used for free parking, the entire consideration paid by the lessee or licensee to the lessor or person receiving the rent or payment by a rental or license fee arrangement is taxable.

(14)(a) When a rental, lease, or license to use or occupy real property involves multiple use of such real property wherein a part of the real property is subject to tax, and a part of the property is excluded from the tax, the Executive Director or the Executive Director's designee in the responsible program shall determine from the lease or license and such other information as may be available, that portion of the total rental charge or license fee which is exempt from the tax. When, in the judgment of the Executive Director or the Executive Director's designee in the responsible program, the amount of rent or license fee stated in the lease or license arrangement for the taxable portion of the real property does not represent true value, the Executive Director or the Executive Director's designee in the responsible program shall make a determination of the proper amount of rent or license fee applicable thereto for the purpose of determining the amount of tax due from such other information as is available.

(b) As an example, the portion of the premises leased or rented by for profit entities, qualifying as homes for the aged, or licensed as a nursing home or hospice under Chapter 400, F.S., which is used as a dwelling unit is taxable on a pro-rata basis. The pro-rata portion shall be determined by the square footage of the portion of the dwelling that is normally accessed and used by the residents compared to the total square footage of the nursing home premises.

1. The areas which are normally accessed and used by the nursing facility residents are exempt. These include:

a. Front lobby,

b. Receptionist's office,

c. Bookkeeper's office (operates as a bank for the residents),

d. Residents' rooms,

e. Hallways,

f. Public restrooms,

g. Social Service's office,
h. Residents' conference room/Party room,
i. Therapy rooms,
j. Dining rooms,
k. Activity rooms/Day rooms,
l. Treatment rooms,
m. Chapel,
n. Central bath/Whirlpool,
o. Residents' pantry/small kitchen area (usually have microwaves and cabinets for residents' use),
p. Grounds which are improved and developed for the residents' use, including lawns, trails, sidewalks, patios, picnic areas,
q. Driveways and parking areas.
2. The areas which are not normally accessed and used by the facility's residents are taxable. These include:
a. Kitchen,
b. Laundry room,
c. Employees' lounge,
d. Hallways connecting non-accessible rooms,
e. Linen closets,
f. Oxygen storage closets,
g. Nurses' stations,
h. Director of Nursing's office,
i. Administrator's office,
j. Director of Admission's office,
k. Housekeeping office,
l. Electrical room,
m. Pharmaceutical storage rooms,
n. Storage rooms for facility's supplies,
o. Sterilization rooms,
p. Medical records office,
q. Janitor's closet,
r. Outside storage of facility's equipment,
s. Areas used for commercial purposes (e.g., beauty shops),
t. Unimproved grounds.

(15) The charge made to its customer by a railroad for the use of a side track located on railroad property is taxable.

(16) Any person who has leased, occupied, or used or was entitled to use any real property and cannot prove that the tax has been paid to his lessor or other person shall be directly liable to the State for any tax, interest, or penalty due on any such taxable transaction.

(17) Payments to a merchants' association by a lessee or licensee shall be taxable if the payments are a part of the consideration for the right to use or occupy the real property. If the payments are not part of the consideration for the right to use or occupy the real property, such payments are not taxable.

(18) The lease or rental of land or a hall or other facilities by a fair association subject to the provisions of Chapter 616, F.S., to a show promoter or prime operator of a carnival or midway attraction is exempt. However, the sublease of land or a hall or other facilities by the show promoter or prime operator of a carnival or midway attraction is taxable.

(19)(a) The lease or rental of real property or a license fee arrangement to use or occupy real property between related "persons," as defined in Section 212.02(12), F.S., in the capacity of lessor/lessee, is subject to tax.

(b) The total consideration, whether direct or indirect, payments or credits, or other consideration in kind, furnished by the lessee to the lessor is subject to tax despite any relationship between the lessor and the lessee.

(c) The total consideration furnished by the lessee to a related lessor for the occupation of real property or the use or entitlement to the use of real property owned by the related lessor is subject to tax, even though the amount of the consideration is equal to the amount of the consideration legally necessary to amortize a debt owned by the related lessor and secured by the real property

occupied, or used, and even though the consideration is ultimately used to pay that debt.

(20) Where two taxpayers, in connection with the interchange of facilities, rent or lease property, each to the other, for use in providing or furnishing any of the services mentioned in Section 166.231, F.S., (electricity, natural or manufactured gas, water service, and telecommunication service), the term "lease or rental" means only the net amount of rental involved.

(21) The rental of a restaurant or hotel dining room is taxable.

(22)(a) When tangible personal property is left upon another's premises under a contract of bailment, the bailee is not exercising a privilege taxable under the provisions of Section 212.031, F.S., relating to leases, licenses, or rentals of real property.

(b) A bailment is a contractual agreement, oral or written, whereby a person (the bailor) delivers tangible personal property to another (the bailee) and the bailor for the duration of the relationship relinquishes his exclusive possession, control, and dominion over the property, so that the bailee can exclude, within the limits of the agreement, the possession of the property to all others. If there is no such delivery and relinquishment of exclusive possession, and the owner's control and dominion over the property is not dependent upon the cooperation of the person on whose premises the property is left, and his access thereto is in no wise subject to the latter's control, it will generally be held that such person is a tenant, lessee, or licensee of the space upon the premises where the property is left.

1. Example: A safety-deposit box in a bank or vault is a bailment, not a lease or license, because the bank has one key and the customer another and both are necessary to gain access to the box.

2. Example: An airport locker is not a bailment, but a lease or license, because the renter has the key and sole access to the stored property.

3. Example: The charge made for use of a frozen food locker in cold storage or locker plants is exempt under conditions which require the facility owner's presence and assent for the food owner to access his property.

(c) A person who merely grants storage space without assuming, expressly or implied, any duty or responsibility with respect to the care and control of the property stored is a landlord of a person granted a right to occupy or use such real property and is not a bailee. Thus, the person granting the right to use such storage space is exercising a privilege taxable under the provisions of Section 212.031, F.S., as a lease or license.

(d) A lease, license, or bailment is indicative of a contractual relationship, and the terms are not mutually exclusive. Whatever label is attached to a contract, in determining whether a transaction is a bailment or a lease or a license, consideration will be given to the manifested intention of the parties as to which relationship has been created.

(e) In the absence of an express contract, the creation of a bailment requires that possession and control pass from the bailor to the bailee; there must be full transfer, actual or constructive, so as to exclude the property from the possession of the owner and all other persons and give the bailee sole custody and control for the time being.

(23) The applicable tax rate for rental payments made by a tenant is based on the date that the tenant occupies or is entitled to occupy the property. The applicable tax rate may not be avoided by delaying or prepaying rent or license fee payments.

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.

12A-1.091 Use Tax.

(1) The Florida Sales and Use Tax Act imposes a tax on the use, consumption, distribution, and storage for use or consumption in this state of tangible personal property purchased in such manner that the sales tax would not be applicable at the time of purchase.

(2)(a) The use tax applies to the use in this state of tangible personal property purchased outside Florida which would have been subject to the sales tax if purchased from a Florida dealer; provided, however, that it shall be presumed that tangible personal property used in other states, territories of the United States, or the District of Columbia for six (6) months or longer under conditions which would lawfully give rise to the taxing jurisdiction of another state, territory of the United States, or District of Columbia before being imported into this state was not purchased for use in this state. For purposes of the presumption set forth herein, it shall be necessary only that the tangible personal property was used under conditions which would allow such other state, territory of the United States, or District of Columbia to impose a sales or use tax on the sale or use of that property regardless of whether any such tax was actually imposed or paid.

(b) The rental or lease of tangible personal property which is used or stored in this state shall be taxable without regard to its prior use or tax paid on purchase outside this state.

(3) The provisions of the Florida Sales and Use Tax shall not apply to the use or consumption, or distribution or storage of tangible personal property for use or consumption in this state upon which a like tax equal to or greater than the amount due this state has been lawfully imposed and paid in another state, territory of the United States, or the District of Columbia before use tax payable to this state would otherwise have become due. If the amount of tax so lawfully imposed and paid in another state, territory of the United States, or the District of Columbia is not equal to or greater than the amount of tax imposed by Chapter 212, F.S., then the person from whom the use tax is due shall pay to the Department of Revenue an amount sufficient to make the tax paid in the other state, territory of the United States, or the District of Columbia and in this state equal to the amount imposed by that chapter.

(4) The use tax does not apply to any property of which the retail sale is specifically exempt from payment of the Florida sales tax. The two taxes, sales and use, stand as complements to each other, and taken together provide a uniform tax upon either the sale at retail or the use of all tangible personal property irrespective of where it may have been purchased.

(5) Every dealer who solicits business, either by direct representatives, indirect representatives or manufacturers' agents and by reason thereof receives orders for tangible personal property from consumers for use, consumption, distribution or storage for use or consumption in the state, shall collect the tax from the purchaser, and no action either in law or in equity on a sale or transaction as provided by terms of Chapter 212, F.S., may be had in this state by any such dealer unless it is affirmatively shown that the provisions of the law have been fully complied with.

(6) For self-accrual authorization, see Rule 12A-1.0911, F.A.C.

(7) Under Section 212.06(1), F.S., use tax is imposed upon the cost of tangible personal property imported into this state for use, consumption, distribution, or storage for use or consumption in this state, after it has come to rest and has become a part of the general mass of property in this state, subject to the provisions contained in Rule 12A-1.045, F.A.C.

(8) If tangible personal property is sent out of the state to be repaired and returned, the transaction is taxable. When tangible personal property is shipped into this state, repaired and shipped back to its owner in another state by common carrier or mail, the amount charged for the repair is exempt.

(9) If items are purchased from a sales office in Florida and shipped direct to a Florida customer by a factory in another state, the transaction is taxable, whether the invoicing is handled by the factory or the Florida office.

(10) If a Florida manufacturer sells taxable merchandise to an unregistered out-of-state dealer, but delivers it to the out-of-state dealer's customer in Florida, he shall collect tax from the out-of-state dealer, who, being unregistered, is unable to furnish a resale certificate.

(11) Law and medical books, accounting manuals, tax service books with currently issued inserts and similar publications are taxable when purchased from out-of-state suppliers for delivery in Florida.

(12)(a) Any person who manufactures factory-built buildings out-of-state for his own use in the performance of a contract for the construction or improvement of real property in Florida shall pay tax at the time such building is imported into Florida. The tax shall only be computed on the cost price of the items used in the manufacture of the building.

(b) For the purpose of this subsection, "factory-built building" means a structure manufactured in a manufacturing facility for installation or erection as a finished building; "factory-built building" includes, but is not limited to, residential, commercial, institutional, storage, and industrial structures.

(13) Any person who has purchased at retail, used, consumed, distributed or stored for use or consumption in this state tangible personal property, admissions, communication services, or leased tangible personal property, or who has leased any real property, space or spaces in parking lots or garages for motor vehicles, hangar storage or tie down for aircraft, or docking or storage space or spaces for boats in boat docks or marinas, and cannot prove that the tax levied by Chapter 212, F.S., has been paid to his vendor or lessor shall be directly liable to the state for any tax, interest, or penalty due on any such taxable transactions.

(14)(a) Any person, whether registered or unregistered, who has purchased or leased tangible personal property either in this state or from out-of-state for use, consumption, or distribution, or for storage to be used or consumed in this state without having paid sales tax on such property if subject to tax, is required to remit use tax on the cost price and on the lease of such property. If such person is registered, use tax is to be remitted with the dealer's sales and use tax return. If such person is unregistered, use tax is to be remitted on Form DR-15MO, Out-of-State Purchase Return (incorporated by reference in Rule 12A-1.097, F.A.C.), on or before the 20th day of the first month after the end of the calendar quarter during which any such property first came to rest and became a part of the general mass of property in this state. When the 20th day falls on Saturday, Sunday, or a legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department of Revenue on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this rule, a legal holiday means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in chapter 683, F.S., and s. 7503 of the Internal Revenue Code. A "legal holiday" pursuant to s. 7503 of the 1986 Internal Revenue Code, as amended, means a legal holiday in the District of Columbia or a Statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) Any person required to file and remit use tax on Form DR-15MO is not considered, by virtue of that fact alone, as "engaged in or conducting business in this state as a dealer," within the meaning of Section 212.18(3), F.S., and is not required to file an application for a certificate of registration.

(c) Any person required to file and remit use tax on Form DR-15MO is not entitled to a collection allowance on account of keeping required records and accounting and remitting taxes as required.

(d) Any person required to file and remit use tax on Form DR-15MO is not required to remit local option surtaxes on property purchased through a remote sale.

(15) For use tax on services taxable under Chapter 212, F.S., see Rule 12A-1.0161, F.A.C.

Rulemaking Authority 212.0596(3), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1), 212.0596, 212.06(1), (2), (4), (7), (8), (11), 212.07(8), 212.183 FS. History–New 10-7-68, Amended 1-7-70, 6-16-72, 11-6-85, Formerly 12A-1.91, Amended 7-7-92, 6-2-93, 11-16-93, 1-4-94, 5-18-94, 6-19-01, 6-14-22.

12A-1.097 Public Use Forms.

(1) The following public use forms and instructions are employed by the Department in its dealings with the public related to the administration of Chapter 212, F.S. These forms are hereby incorporated by reference in this rule.

(a) Copies of these forms, except those denoted by an asterisk (*), are available, without cost, by one or more of the following methods: 1) downloading the form from the Department's website at floridarevenue.com/forms; or, 2) calling the Department at (850)488-6800, Monday through Friday, (excluding holidays); or, 3) writing the Florida Department of Revenue, Taxpayer Services, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112. Persons with hearing or speech impairments may call the Florida Relay Service at 1(800)955-8770 (Voice) and 1(800)955-8771 (TTY).

(b) Forms (certifications) specifically denoted by an asterisk (*) are issued by the Department upon final approval of the appropriate application. Defaced copies of certifications, for purposes of example, may be obtained by written request directed to:
Florida Department of Revenue
Taxpayer Services
5050 West Tennessee Street
Tallahassee, Florida 32399-0112.

Form Number	Title	Effective Date
(2)(a) DR-1	Florida Business Tax Application (http://www.flrules.org/Gateway/reference.asp?No=Ref-14227)	01/22
(b) DR-1N	Registering Your Business (http://www.flrules.org/Gateway/reference.asp?No=Ref-12309)	01/21
(c) DR-1CON	Application for Consolidated Sales and Use Tax Filing Number (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06358)	01/16
(d) DR-1A	Application for Registered Businesses to Add a New Florida Location (http://www.flrules.org/Gateway/reference.asp?No=Ref-14228)	01/22
(e) DR-1C	Application for Collective Registered of Living or Sleeping Accommodations (http://www.flrules.org/Gateway/reference.asp?No=Ref-11783)	03/20
(f) DR-1CCN	Application for Sales and Use Tax County Control Reporting Number (http://www.flrules.org/Gateway/reference.asp?No=Ref-11784)	03/20
(g) DR-1FA	Application for a Florida Certificate of Forwarding Agent Address (http://www.flrules.org/Gateway/reference.asp?No=Ref-14398)	06/22
(3) DR-5	Application for Consumer's Certificate of Exemption with Instructions (R. 01/17) (http://www.flrules.org/Gateway/reference.asp?No=Ref-07745)	01/17
(4)(a) DR-7	Consolidated Sales and Use Tax Return (http://www.flrules.org/Gateway/reference.asp?No=Ref-11378)	01/20
(b) DR-7N	Instructions for Consolidated Sales and Use Tax Return (http://www.flrules.org/Gateway/reference.asp?No=Ref-14229)	07/21
(c) DR-15CON	Consolidated Summary – Sales and Use Tax Return (http://www.flrules.org/Gateway/reference.asp?No=Ref-11378)	01/20
(5)(a) DR-15	Sales and Use Tax Return (http://www.flrules.org/Gateway/reference.asp?No=Ref-11380)	01/20
(b) DR-15N	Instructions for DR-15 Sales and Use Tax Returns (http://www.flrules.org/Gateway/reference.asp?No=Ref-14230)	07/21
(c) DR-15AIR	Sales and Use Tax Return for Aircraft (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06361)	01/16
(d) DR-15EZ	Sales and Use Tax Return (http://www.flrules.org/Gateway/reference.asp?No=Ref-11382)	01/20
(e) DR-15EZN	Instructions for DR-15EZ Sales and Use Tax Returns (http://www.flrules.org/Gateway/reference.asp?No=Ref-14231)	07/21
(f) DR-15JEZ	Application for the Exemption of Electrical Energy Used in an Enterprise Zone	06/10

	(R. 08/09)	
(g) DR-15MO	Out-of-State Purchase Return (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06363)	01/16
(h) DR-15ZC	Application for Florida Enterprise Zone Jobs Credit for Sales Tax (R. 10/09)	06/10
(i) DR-15ZCN	Instructions for Completing the Sales and Use Tax Return, Form DR-15, when taking the Enterprise Zone Jobs Tax Credit (R. 06/08)	09/09
(j) EZ-E	Florida Enterprise Zone Program – Business Equipment Sales Tax Refund Application for Eligibility (R. 07/01)	08/02
(k) EZ-M	Florida Enterprise Zone Program – Building Materials Sales Tax Refund Application for Eligibility (R. 07/05)	04/06
(6)(a) DR-16A	Application for Self-Accrual Authority/Direct Pay Permit (R. 01/15) (http://www.flrules.org/Gateway/reference.asp?No=Ref-04858)	01/15
(b) DR-16P*	Sales and Use Tax Direct Pay Permit (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06364)	01/16
(c) DR-16R	Renewal Notice and Application for Sales and Use Tax Direct Pay Permit (R. 01/15) (http://www.flrules.org/Gateway/reference.asp?No=Ref-04859)	01/15
(7) DR-17A	Certificate of Cash Deposit or Cash Bond (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06365)	01/16
(8)(a) DR-18	Application for Amusement Machine Certificate (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06366)	01/16
(8)(b) DR-18-N	Application for Amusement Machine Certificate General Information and Instructions (http://www.flrules.org/Gateway/reference.asp?No=Ref-06366)	01/16
(8)(c) DR-18R	Amusement Machine Certificate Renewal Application (N. 03/17) (http://www.flrules.org/Gateway/reference.asp?No=Ref-07853)	03/17
(8)(d) DR-18RS	Amusement Machine Certificate Renewal Application Second Notice (N. 03/17) (http://www.flrules.org/Gateway/reference.asp?No=Ref-07854)	03/17
(9) DR-26RP	Florida Neighborhood Revitalization Program Application for Sales and Use Tax (R. 01/17) (http://www.flrules.org/Gateway/reference.asp?No=Ref-07748)	01/17
(10) DR-29	Application for Release or Refund of Security (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06367)	01/16
(11) DR-46NT	Nontaxable Medical Items and General Grocery List (http://www.flrules.org/Gateway/reference.asp?No=Ref-14232)	01/22
(12) DR-72-2	Declaration of Taxable Status – Trailer Camps, Mobile Home Parks, and Recreational Vehicle Parks (R. 01/17) (http://www.flrules.org/Gateway/reference.asp?No=Ref-07749)	01/17
(13) DR-95B	Schedule of Tax Credits Claimed on Repossessed Tangible Personal Property (http://www.flrules.org/Gateway/reference.asp?No=Ref-10175)	01/19
(14) DR-99A	Affidavit for Occasional or Isolated Sale of a Motor Vehicle (R. 01/17) (http://www.flrules.org/Gateway/reference.asp?No=Ref-07750)	01/17
(15) DR-123	Partial Exemption for Motor Vehicle Sold to Resident of Another State: Affidavit (http://www.flrules.org/Gateway/reference.asp?No=Ref-12313)	01/21
(16) DR-231*	Certificate of Exemption for Entertainment Industry Qualified Production Company (R. 06/12)	06/12
(17) DR-1214	Application for Temporary Tax Exemption Permit (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06371)	01/16
(18)(a) DR-117000	Florida Tax Credit Scholarship Program for Commercial Rental Property –	10/19

	Application for a Credit Allocation (http://www.flrules.org/Gateway/reference.asp?No=Ref-11202)	
(b) DR-117100	Florida Tax Credit Scholarship Program for Commercial Rental Property – Application to Change a Credit Allocation (http://www.flrules.org/Gateway/reference.asp?No=Ref-11203)	10/19
(c) DR-117200	Florida Tax Credit Scholarship Program for Commercial Rental Property – Application for Rescindment of a Credit Allocation (http://www.flrules.org/Gateway/reference.asp?No=Ref-11204)	10/19
(d) DR-117300	Florida Tax Credit Scholarship Program for Commercial Rental Property – Contributions Received by an Eligible Nonprofit Scholarship-Funding Organization (http://www.flrules.org/Gateway/reference.asp?No=Ref-11205)	10/19
(19) DR-300400	Boat, Motor Vehicle, or Aircraft Dealer Application for Special Estimation of Taxes (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06372)	01/16
(20) DR-600013	Request for Verification that Customers are Authorized to Purchase for Resale (R. 01/16) (http://www.flrules.org/Gateway/reference.asp?No=Ref-06373)	01/16
(21) DR-1214DCP	Application for Data Center Property Temporary Tax Exemption Certificate (http://www.flrules.org/Gateway/reference.asp?No=Ref-09254)	04/18
(22) DR-5DCP	Application for Data Center Property Certificate of Exemption (http://www.flrules.org/Gateway/reference.asp?No=Ref-09255)	04/18
(23) DR-26SIGEN	Application for Refund – Sales Tax Paid on Generators for Nursing Homes or Assisted Living Facilities (http://www.flrules.org/Gateway/reference.asp?No=Ref-10174)	01/19
(24)(a) DR-HS1	Hope Scholarship Program – Contribution Election (http://www.flrules.org/Gateway/reference.asp?No=Ref-11206)	10/19
(b) DR-HS2	Hope Scholarship Program – Dealer Contribution Collection Report (http://www.flrules.org/Gateway/reference.asp?No=Ref-11207)	10/19
(c) DR-HS3	Hope Scholarship Program – Contributions Received by an Eligible Nonprofit Scholarship-Funding Organization (http://www.flrules.org/Gateway/reference.asp?No=Ref-11208)	10/19

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., 212.0596(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), 1002.40(16) FS. Law Implemented 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, 6-14-22.

12A-1.103 Remote Sales; Marketplaces.

(1) Definitions.

(a) A “marketplace” means any physical place or electronic medium through which tangible personal property is offered for sale.

(b) A “marketplace provider” means a person who facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller tangible personal property in a marketplace and who directly, or indirectly through agreements or arrangements with third parties, collects payment from the customer and transmits all or part of the payment to the marketplace seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.

(c) A “marketplace seller” means a person who has an agreement with a marketplace provider that is a Florida dealer and who makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by the marketplace provider.

(d) A “remote sale” means a retail sale of tangible personal property ordered by mail, telephone, the Internet, or other means of communication from a person who receives the order outside of this state and transports the property or causes the property to be transported from any jurisdiction, including this state, to a location in this state. For purposes of this paragraph, tangible personal property delivered to a location within this state is presumed to be used, consumed, distributed, or stored to be used or consumed in this state.

(e) A “remote seller” means a person who makes a substantial number of remote sales outside of a marketplace. Marketplace providers and marketplace sellers who make a substantial number of remote sales outside of a marketplace are considered remote sellers.

(f) A “substantial number of remote sales” means any number of taxable remote sales in the previous calendar year in which the sum of the sales prices, as defined in Section 212.02(16), F.S., exceeded $100,000.

(2) Marketplace providers and remote sellers required to collect and remit sales tax and discretionary sales surtax due on retail sales to persons in Florida must register with the Department electronically as provided in Rule 12A-1.060, F.A.C.

(3)(a) A marketplace provider must certify to its marketplace sellers that it will collect and remit any Florida sales tax, plus applicable discretionary sales surtax, due on retail sales made through the marketplace to persons in Florida. This certification may be included in the agreement between a marketplace seller and a marketplace provider.

(b) A marketplace seller who makes sales outside a marketplace must collect and remit Florida sales tax, plus applicable discretionary sales surtax, on retail sales made outside the marketplace to persons in Florida if they made a substantial number of remote sales in the previous calendar year. When determining whether a marketplace seller made a substantial number of remote sales, only those sales made outside of the marketplace are included in the total amount of taxable remote sales.

(4)(a) The following dealers must timely file Florida sales and use tax returns and remit sales tax and discretionary sales surtax to the Department by electronic means.

1. A marketplace provider that is a dealer under Chapter 212, F.S.

2. A person who is required to collect and remit sales tax on remote sales.

(b) Returns and payments must be submitted to the Department by electronic means as provided in Rule 12A-1.056, F.A.C., and Rule Chapter 12-24, F.A.C.

Cross Reference: Rule 12A-15.003, F.A.C.

(5) Marketplace Seller notification to collect sales tax.

(a) Effective April 1, 2022, a marketplace seller may collect and remit all applicable taxes and fees on its sales made through a marketplace provider when all of the following conditions are met:

1. The marketplace seller and the marketplace provider have contractually agreed that the marketplace seller will collect and remit all applicable taxes and fees on its sales made through the marketplace.

2. The marketplace seller has registered with the Department as a dealer under Section 212.18, F.S., and has provided evidence of registration to the marketplace provider.

3. The marketplace seller has annual United States gross sales of more than $1 billion, including the gross sales of any related entities or the combined sales of all franchisees of a single franchisor.

4. The marketplace seller has sent written notification to the Department as provided in paragraph (b).

(b) The notice must be on the marketplace seller’s business letterhead, state that the marketplace seller meets all conditions stated in Section 212.05965(11), F.S., and has chosen to collect and remit all applicable taxes and fees for its sales made through a marketplace provider. The notice must be signed by an individual authorized to sign on behalf of the marketplace seller. The notice

may be delivered in one of three ways:

1. A letter can be mailed to the following mailing address:

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

2. A scanned letter can be emailed to registration@floridarevenue.com.

3. A letter can be faxed to 850-922-0859.

(c) Sample Notice.

1. The notice may take any form as long as it clearly states that the marketplace seller is electing to collect all applicable taxes and fees for its sales made through a marketplace provider.

2. The notice must be signed by an authorized individual of the marketplace seller.

3. An example of notice language is as follows: “In accordance with Section 212.05965(11), F.S., (Name of Marketplace Seller, sales and use tax certificate number) has met the statutory requirements that allow it to collect and remit all applicable taxes and fees for its sales made through (name of Marketplace Provider) and that it is liable for failure to collect or remit those taxes and fees. For questions, please contact (name of Marketplace Seller contact person) at (contact telephone number or email address).”

Rulemaking Authority 212.0596(3), 212.18(2), 213.06(1) FS. Law Implemented 212.05, 212.0596, 212.05965, 212.06(2), 212.18(3), 213.37 FS. History–New 12-8-87, Amended 8-10-92, 4-17-03, 6-14-22.

12A-1.104 Sales of Property to be Transported to a Cooperating State.

Rulemaking Authority 212.06(3)(b)2., 212.18(2), 213.06(1) FS. Law Implemented 212.06(3) FS. History–New 12-8-87, Amended 12-31-20, Repealed 6-14-22.

12A-1.108 Exemption for Data Center Property.

(1) The sale of "data center property," as defined in Section 212.08(5)(s)1.d., F.S., is exempt from sales tax when the following requirements will be met:

(a) The facility meets the definition of "data center," as provided in Section 212.08(5)(s)1.c., F.S.;

(b) The data center's owners and tenants have made a cumulative, minimum capital investment, after July 1, 2017, of $150 million for the data center, excluding any expenses incurred in the acquisition of property operating as a data center in the six months prior to the acquisition.

(c) The data center must have a critical IT load of 15 megawatts or higher; and,

(d) Each individual owner or tenant within the data center must have a dedicated critical IT load of 1 megawatt or higher; and,

(e) Each of the above requirements is met within 5 years after the commencement of the construction of the data center.

(2) Application process.

(a) To qualify for the exemption for data center property, the data center owner must complete an Application for Data Center Property Temporary Tax Exemption Certificate (form DR-1214DCP, incorporated by reference in Rule 12A-1.097, F.A.C.). The application must state that a qualifying data center designation is being sought and must be accompanied by information that indicates the exemption requirements of subsection (1), will be met.

(b) The Department will issue a Data Center Property Temporary Tax Exemption Certificate (DR-14TDCP) upon a tentative determination by the Department that the exemption requirements provided in subsection (1), will be met.

(c) The data center owner must complete an Application for Data Center Property Certificate of Exemption (form DR-5DCP, incorporated by reference in Rule 12A-1.097, F.A.C.) once the exemption requirements have been met. The applicant must deliver to the Department its Data Center Property Temporary Tax Exemption Certificate, along with the following documentation sufficient to support that the exemption requirements have been satisfied:

1. Certification from a professional engineer, licensed pursuant to Chapter 471, F.S., whose services are contracted solely to certify that the data center has met the critical IT load requirement;

2. Certification from a Florida certified public accountant, as defined in Section 473.302, F.S., whose services are contracted solely to certify that the data center owners and tenants have made the required cumulative capital investment.

(d) The Department will issue a Data Center Property Certificate of Exemption (DR-14DCP) to the data center owner once it has determined that the documentation provided certifies that the exemption requirements have been met.

(3) Documenting the exemption.

(a) Data center owners making tax-exempt purchases of data center property are required to present the Data Center Property Temporary Tax Exemption Certificate (DR-14TDCP) or the Data Center Property Certificate of Exemption (DR-14DCP), once issued by the Department, to the selling dealer.

(b) Tenants and contractors making tax-exempt purchases of data center property are required to present a copy of the Data Center Property Temporary Tax Exemption Certificate (DR-14TDCP) or the Data Center Property Certificate of Exemption (DR-14DCP), issued to the data center owner by the Department, along with a Certificate of Entitlement to each vendor to affirm that the purchaser qualifies for the exemption. The vendor must maintain copies of the certificates until tax imposed by Chapter 212, F.S., may no longer be determined and assessed pursuant to Section 212.08(5)(s)3.c., F.S. Possession by a vendor of the certificate from the purchaser relieves the vendor from the responsibility of collecting tax on the sale, and the Department shall look solely to the purchaser for recovery of tax if it determines that the purchaser was not entitled to the exemption.

(c) The following is the format of the Certificate of Entitlement to be issued by the data center tenant or data center contractor when making exempt purchases of data center property:

CERTIFICATE OF ENTITLEMENT

The undersigned _____ (the Purchaser) affirms that it is a tenant or contractor of _____ (the Data Center), located at

_____ (Data Center Address), and is eligible to extend the Data Center Property Temporary Tax Exemption Certificate/Data Center Property Certificate of Exemption to lease or purchase data center property exempt from sales tax.

The Purchaser affirms that the items purchased or rented from _____ (Vendor) will be used exclusively at the data center to construct, outfit, operate, support, power, cool, dehumidify, secure, or protect a data center and any contiguous dedicated substations.

The Purchaser acknowledges that if the subject purchased or leased data center property does not qualify for the exemption provided

in Section 212.08(5)(s), F.S., and Rule 12A-1.108, F.A.C., the Purchaser will be subject to the tax, interest, and penalties due on the purchased or leased property.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax, I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction for a third-degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement, and the facts stated in it are true.

Signature of Purchaser _____ Title _____

Purchaser's Name (Print or Type) _____ Date

_____

Purchaser's Federal Employer Identification Number: _____

Data Center Owner Certificate Number: _____

Telephone Number: _____

Do not send to the Florida Department of Revenue. This Certificate of Entitlement must be retained in the vendor's and the tenant's or contractor's books and records.

(4)(a) The exemption for purchases and leases of data center property does not include rental consideration made for the lease or license to use real property subject to tax under Section 212.031. F.S. Rental consideration includes all considerations due and payable by the tenant to its landlord for the privilege of use, occupancy, or the right to use or occupy any real property for any purpose, including pass-through charges for common area maintenance and utilities, except certain electricity charges provided in paragraph (4)(b), below. See subsection 12A-1.070(4), F.A.C.

(b) The following charges for electricity are exempt as charges for "data center property":

1. Charges billed by the utility provider directly to a data center tenant.

2. Charges billed by the utility provider directly to a data center owner.

3. Charges billed to a data center tenant by a data center owner that are separately stated on the owner's invoice at the same or lower price as that billed by the utility provider to the owner.

(c) To document the tax-exempt purchase of electricity as provided in paragraph (4)(b), above, the purchaser shall comply with the documentation requirements set out in subsection (3), above.

(d) Data center property includes areas, infrastructure, fixtures and furnishings to be used exclusively at the data center by persons employed at the data center provided that the employees using the areas, infrastructure, furniture and fixtures are directly responsible for the operation, monitoring, security or support of data center property.

(5) The Department will conduct a review of registered data centers every 5 years to ensure that the data center exemption requirements provided in Section 212.08(5)(s), F.S., continue to be met. The first 5-year period will begin with the date the Data Center Property Certificate of Exemption (DR-14DCP) is issued to the data center. Within 3 months before the end of any 5-year period, data center owners are required to submit a written declaration, under penalties of perjury, that the required critical IT load requirements of paragraph (1)(a), are met and that the data center continues to operate in compliance with Section 212.08(5)(s)1., F.S. The declaration should be sent to Technical Assistance and Dispute Resolution, Florida Department of Revenue, P.O. Box 7443, Tallahassee, FL 32314-7443.

(6)(a) If the Department determines that the data center or any owners, tenants, contractors, or other purchasers have not met the requirements found in Section 212.08(5)(s), F.S., with respect to any purchase, then such purchaser is liable to pay the tax that was avoided at the time of purchase, as well as penalty and interest from the date of purchase.

(b) If the Department determines that the data center is no longer in compliance with the provisions of Section 212.08(5)(s), F.S., then the Data Center Property Certificate of Exemption (DR-14DCP) will be revoked; any person who made tax exempt purchases under that certificate will liable to pay any tax that was avoided since the date the data center fell out of compliance with statutory requirements, as well as penalty and interest from the date of such purchases; and no further purchases will be exempt.

(7) Except as provided in paragraph (5)(b), the exemption provided for data center property is a permanent exemption for qualifying data centers that apply for and receive a Data Center Property Temporary Tax Exemption Certificate during the period from July 1, 2017, through June 30, 2027, and then meet all requirements for the Data Center Property Certificate of Exemption within five years. The Department will not process applications for Data Center Property Temporary Tax Exemption Certificate after June 30, 2027.

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 212.08(5)(s) FS. History–New 4-16-18, 6-14-22.