

provisions for certain marketplace sellers to collect sales tax on sales made through a marketplace; and provides that marketplace providers and remote sellers are required to collect both sales tax and discretionary sales surtax. This emergency rule supersedes Emergency Rule 12AER21-13.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Danielle Boudreaux, Technical Assistance and Dispute Resolution, telephone (850)717-7082, email RuleComments@floridarevenue.com.

THE FULL TEXT OF THE EMERGENCY RULE IS:
Substantial rewording of Rule 12A-1.103, F.A.C., follows.

12AER21-23 ~~12A-1.103~~ Remote Mail Order 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 s. 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 12AER21-21.

(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 12AER21-8 and Rule Chapter 12-24, F.A.C.

Cross Reference: Rule 12AER21-15.

(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 s. 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 s. 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)."

PROPOSED EFFECTIVE DATE: JANUARY 1, 2022

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS, Section 26 of Chapter 2021-2, L.O.F. Law Implemented ~~212.02(14), (21)~~; 212.05, 212.0596, 212.05965, 212.06(2), ~~(5)~~, ~~212.12(1)~~, 212.18(3), 213.37 ~~212.20(4), 215.26(2)~~ FS. History—New 12-8-87, Amended 8-10-92, 4-17-03.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: January 1, 2022

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