

[REDACTED]

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized the promulgation of emergency rules to implement the provisions of Sections 50 and 51 of Chapter 2022-97, Laws of Florida. Additionally, this emergency rule is the most expedient and appropriate means of notifying taxpayers of these provisions.

SUMMARY: During the period of July 1, 2022, through June 30, 2023, tax is not due on the retail sale of children’s diapers and baby and toddler clothing.

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:

12AER22-6 Sales Tax Exemption for Children’s Diapers; Baby and Toddler Clothing, Apparel, and Shoes During the Period of July 1, 2022, through June 30, 2023.

(1) Definitions. For purposes of this rule, the following definitions apply:

(a)1. “Clothing” and “apparel” means any article of clothing or wearing apparel intended to be worn on or about the human body.

2. “Clothing” and “apparel” do not include watches, watchbands, jewelry, umbrellas, and handkerchiefs.

(b) "Exemption period" means the period from July 1, 2022, through June 30, 2023.

(c) “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 emergency rule, 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.

(2) During the exemption period, tax is not due on the retail sale of the following:

(a) Single-use and reusable children’s diapers, including those used for toilet training, and diaper inserts.

(b) Baby and toddler clothing, apparel, and shoes, primarily intended for children age 5 or younger.

(3) Sales of Sets Containing Both Exempt and Taxable Items. When exempt items are normally sold together with taxable merchandise as a set or single unit, the sales price of the set or single unit is subject to sales tax.

(4) Gift Cards.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.: RULE TITLE:
12AER22-6 Sales Tax Exemption for Children’s Diapers; Baby and Toddler Clothing, Apparel, and Shoes During the Period of July 1, 2022, through June 30, 2023.

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Section 53 of Chapter 2022-97, Laws of Florida, authorizes the Department of Revenue to promulgate emergency rules to implement the temporary tax exemption for children’s diapers and baby and toddler clothing from July 1, 2022, through June 30, 2023. The promulgation of this emergency rule ensures that the public is notified in the most expedient and appropriate manner regarding the sales tax exemption period.

(a) Eligible items purchased during the exemption period using a gift card will qualify for the exemption, regardless of when the gift card was purchased.

(b) Eligible items purchased after the exemption period using a gift card are taxable, even if the gift card was purchased during the exemption period.

(5) Exchanges.

(a) If a customer purchases an eligible item during the exemption period, then later exchanges the item for the same item (e.g., different size or different color), no tax will be due even if the exchange is made after the exemption period.

(b) If a customer purchases an eligible item during the exemption period, then later returns the item and receives credit towards the purchase of an item that did not qualify for the exemption, the new item purchased is subject to tax.

(6) Returns. When a customer returns an item purchased during the sales tax exemption period and requests a refund or credit of tax the customer must produce a receipt or invoice showing tax was charged and paid on the original purchase of the item, or the retailer must have sufficient documentation to show tax was paid on the original purchase of the item.

(7) Rain Checks. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is purchased after the exemption period.

(8) Layaway Sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and receives the merchandise at the end of the payment period. Eligible items placed on layaway during the exemption period are tax exempt, even if final payment of the layaway is made after the exemption period. If a customer makes a final payment and takes delivery of the item during the exemption period, the eligible items are tax exempt.

(9) Remote Sales.

(a) Eligible items purchased through a marketplace provider or from a remote seller are exempt when the order is accepted by the marketplace provider or remote seller during the sales tax exemption period for immediate shipment, even if delivery is made after the sales tax exemption period.

(b) An order is accepted by the company when action has been taken to fill the order for immediate shipment. Actions to fill an order include assigning an "order number" to a telephone order, confirming an Internet order by an email to the customer, or placing a date received on an order received by mail.

(c) An order is considered to be for immediate shipment when delayed shipment is not requested by the customer. An order is for immediate shipment even if the shipment may be

delayed because of a backlog of orders or stock is currently unavailable or on back order.

(10) Shipping and Handling Charges. When separately stated shipping charges are part of the sales price, and both taxable and exempt items are listed on a sales invoice or receipt, the shipping charges must be proportionately allocated to the charge for each item to determine the total sales price of the item. The charge for each item is divided by the total charge of all the items ordered to obtain the percentage of charge that each item bears to the total order. The amount of the shipping charge applicable to each item is calculated by multiplying the total shipping charge by the percentage of cost for each item. If an item is exempt, the associated shipping charge is also exempt.

(11) License Fees or Other Fees Imposed by Panama City and Panama City Beach. Panama City and Panama City Beach impose a 1% merchant's license fee or tax on retailers. The merchant's license fee is included in the sales price of each item. When the fee is separately stated, and both taxable and exempt items are listed on a sales invoice or receipt, the merchant's fee must be allocated to the charge for each item on the invoice. If the item is exempt, the associated merchant's license fee is exempt.

(12) Alterations to Eligible Items. Alterations to clothing or footwear do not qualify for the exemption, even though alterations may be sold, invoiced, and paid for at the same time as the item to be altered is purchased.

(13) Rentals. Rentals of eligible items do not qualify for the exemption.

(14) List of Items of Clothing and Their Taxable Status During the Exemption Period. The following is a list of items of clothing and their taxable status during the exemption period. This is not an exhaustive list. T = Taxable, E = Exempt.

<u>A</u>	
<u>T</u>	<u>Accessories (generally)</u>
<u>E</u>	<u>Barrettes and bobby pins</u>
<u>E</u>	<u>Belt buckles</u>
<u>E</u>	<u>Bow ties</u>
<u>E</u>	<u>Hairnets, bows, clips, and hairbands</u>
<u>T</u>	<u>Handbags</u>
<u>T</u>	<u>Handkerchiefs</u>
<u>T</u>	<u>Jewelry</u>
<u>T</u>	<u>Key cases</u>
<u>E</u>	<u>Neckwear</u>
<u>E</u>	<u>Ponytail holders</u>
<u>E</u>	<u>Scarves</u>
<u>E</u>	<u>Ties</u>

T Wallets
T Watchbands
T Watches
E Aerobic and fitness clothing
E Aprons and clothing shields
T Athletic gloves
T Athletic pads
E Athletic supporters

B
E Baby clothes
T Backpacks and bookbags
E Bandanas
E Baseball cleats
E Bathing suits, caps, and cover-ups
E Belts
E Bibs
E Bicycle helmets (youth)**
E Blouses
E Boots (except ski or fishing boots)
E Bowling shoes
E Braces and supports worn to correct or alleviate a physical incapacity or injury*

C
T Chest protectors
E Choir and altar clothing*
E Cleated and spiked shoes
T Cloth, lace, knitting yarns, and other fabrics
T Clothing repair items, such as thread, buttons, tapes, iron-on patches, or zippers
E Coats
T Coin purses
E Costumes
E Coveralls
T Crib blankets

D-E
T Diaper bags
E Diapers, diaper inserts, diapers for toilet training

T Diving suits (wet and dry)
E Dresses
T Duffel bags
T Elbow pads

F
T Fanny packs
T Fins
T Fishing boots (waders)
E Fishing vests (nonflotation)
T Football pads
E Formal clothing

G
T Garment bags
T Gloves (generally)
T Baseball
T Batting
T Bicycle
E Dress
E Garden
T Golf
T Hockey
E Leather
T Rubber
T Surgical
T Tennis

T Goggles (except prescription*)
E Graduation caps and gowns
E Gym suits and uniforms

H
T Hard hats
E Hats and caps
T Helmets (bicycle**, baseball, football, hockey, motorcycle, sports)
E Hosiery and pantyhose
E Hunting vests

I-J
T Ice skates
T In-line skates
E Jackets
E Jeans

K
T Key chains
T Knee pads

L
E Leggings, tights, and leg warmers
E Leotards
T Life jackets and vests
T Luggage

M-P
E Martial arts attire
E Overshoes and rubber shoes
T Pads (football, hockey, soccer, elbow, knee, shoulder)
T Paint or dust masks
E Pants
T Patterns
T Protective masks (athletic)
T Purses

R
E Raincoats, rain hats, and ponchos
E Receiving blankets
E Religious clothing*
T Repair of wearing apparel
E Robes
T Roller blades
T Roller skates

S
E Safety clothing
T Safety glasses (except prescription*)
E Safety shoes
E Scout uniforms
E Shawls and wraps
T Shin guards and padding
E Shirts
E Shoe inserts and insoles
E Shoes (including athletic)
E Shoulder pads (e.g., dresses, jackets)
T Shoulder pads (e.g., football,

hockey)
E Shorts
E Ski boots (snow)
T Ski vests (water)
E Ski suits (snow)
T Skin diving suits
E Skirts
E Sleepwear (nightgowns and pajamas)
E Slippers
E Slips
E Socks
T Suitcases
E Suits, slacks, and jackets
T Sunglasses (except prescription*)
E Suspenders
E Sweatbands
E Sweaters
T Swimming masks
E Swimsuits and trunks

T
E Ties (neckties, bow ties)
E Tuxedos

U
T Umbrellas
E Underclothes
E Uniforms (work, school, and athletic - excluding pads)

V-W
E Vests
T Wigs

* These items are always exempt as religious, prescription, prosthetic, or orthopedic items.

** Bicycle helmets marketed for use by youth are always exempt from sales tax.

Rulemaking Authority Section 53, Chapter 2022-97, L.O.F. Law Implemented Sections 50 and 51, Chapter 2022-97, L.O.F. History-New 05-09-22.

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: 05/09/2022