



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

November 14, 2023

Tonya L. Fulford
Operations Review Specialist
Florida Department of Revenue
Building One, Room 2600
2450 Shumard Oak Blvd.
Tallahassee, Florida 32399-0100

Dear Tonya L Fulford:

Your adoption package for Rule 12C-1.01915, F.A.C. was received, electronically, by the Florida Department of State, Administrative Code and Register at 8:42 a.m. on November 13, 2023. After review, it appears that the package meets statutory requirements and those of Rule 1-1.010, F.A.C. and is deemed filed for adoption at the time received, as indicated above. The effective date is December 3, 2023.

Sincerely,

Anya C. Owens
Administrative Code and Register Director

ACO/al

Owens, Anya C.

From: Tonya Fulford <Tonya.Fulford@floridarevenue.com>
Sent: Monday, November 13, 2023 8:42 AM
To: RuleAdoptions
Cc: Martha Gregory; Brinton Hevey; Tammy Miller; Janet Young
Subject: Department of Revenue Rule Certification - 12C-1.01915
Attachments: 12C-1.01915_Rule Certification_Packet_111323.pdf; 12C-1.01915_Final Rule Language_11.13.23.docx

Importance: High

EMAIL RECEIVED FROM EXTERNAL SOURCE

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

Good morning,

Attached are the rule certification packet for Rule 12C-1.01915 and the final language in word format.

Please let me know if you have any questions.



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

NOTIFICATION TO RECIPIENTS: The subject line of this email may indicate that this email has been sent unsecure. This is a default setting which in no way indicates that this communication is unsafe, but rather that the

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

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KATHLEEN PASSIDOMO
President



Senator Blaise Ingolia, Chair
Representative Tobin Rogers "Toby" Overdorf, Vice Chair
Senator Colleen Burton
Senator Erin Grall
Senator Rosalind Osgood
Senator Darryl Ervin Rouson
Representative Shane G. Abbott
Representative Jervonte "Tae" Edmonds
Representative Alina Garcia
Representative Yvonne Hayes Hinson
Representative Joel Rudman, M.D.

PAUL RENNER
Speaker



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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

CERTIFICATION

Department: Department of Revenue
Agency: Corporate, Estate and Intangible Tax
Rule No(s): 12C-1.01915
File Control No: 190208

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

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

Certification Date: 11/13/2023

This certification expires after: 11/20/2023

Certifying Attorney: Jamie Jackson

NOTE:

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



Florida Department of Revenue
Office of the Executive Director

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

November 13, 2023

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

Re: Certification of Department of Revenue Rules

Dear Ms. Owens:

The following Department of Revenue Rules are presented for certification:

12C-1.01915

The following persons may be contacted regarding these rule certifications:

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

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

Sincerely,

Janet Young
Agency Rules Coordinator

Attachments:

Joint Administrative Procedures Committee Certification
Certification Of Department of Revenue Administrative Rules Filed with The Department of State
Certification Of Department of State Designation of Rule the Violation of Which Is a Minor Violation
Rule Summary
Final Rule Language
Certification Of Materials Incorporated by Reference in Rules Filed with The Department of State
Email For Approved Reference Material for Rule Adoption

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

I hereby certify:

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

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

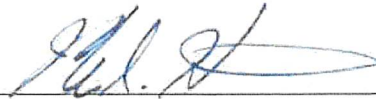
Rule No(s).

12C-1.01915

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

Effective Date:

(month) (day) (year)



Signature, Person Authorized to Certify Rules

General Counsel

Title

4

Number of Pages Certified

CERTIFICATION OF DEPARTMENT OF STATE
DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION

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

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


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

Rule No(s).

Rules covered by this certification:

Rule No(s).

12C-1.01915



Signature of Agency Head

Executive Director
Title

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
CREATING RULE 12C-1.01915

SUMMARY OF PROPOSED RULE

Rule 12C-1.01915, F.A.C., Credit for Qualified Railroad Reconstruction or Replacement Expenditures, is created to implement the provisions of s. 220.1915, F.S., providing how to apply for, transfer, and use the Credit for Qualified Railroad Reconstruction or Replacement Expenditures once it becomes effective. A qualifying railroad is eligible for a credit against Florida corporate income tax imposed by Ch. 220, F.S., equal to 50 percent of a qualifying railroad's qualified expenditures incurred in Florida for taxable years beginning on or after January 1, 2023. The amount of the credit may not exceed the product of \$3,500 and the number of miles of railroad track owned or leased within Florida by the qualifying railroad as of the end of the taxable year in which the qualified expenditures were incurred. To claim a tax credit, the railroad must meet the criteria specified in s. 220.1915(1) and (2), F.S.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The creation of Rule 12C-1.01915, F.A.C., is necessary to implement the Railroad Reconstruction or Replacement Expenditures Credit Program pursuant to s. 220.1915, F.S., created by s. 32, Ch. 2022-97, L.O.F.

FEDERAL COMPARISON STATEMENT

The provisions contained in this rule does not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

April 13, 2023

A Notice of Proposed Rule Development was published in the *Florida Administrative Register* on March 30, 2023 (Vol. 49, No. 62, p. 1169), to advise the public of the creation of Rule 12C-1.01915, F.A.C., and to provide

that, if requested in writing and not deemed unnecessary by the agency head, a rule development workshop would be held on April 13, 2023. No request was received, and no workshop was held. No written comments were received by the Department.

SUMMARY OF PUBLIC MEETING

May 23, 2023

The Governor and Cabinet, sitting as head of the Department of Revenue, met on May 23, 2023, and approved the publication of the Notice of Proposed Rule for Rule 12C-1.01915, as well as approval to file and certify the rule with the Secretary of State pursuant to s. 120.54(3)(e)1., F.S., if the substance of the proposed rule remains unchanged upon reaching the date applicable to filing for final adoption pursuant to s. 120.54(3)(e)2., F.S. A notice for the public meeting was published in the *Florida Administrative Register* on May 12, 2023 (Vol. 49, No. 93, p. 1800).

SUMMARY OF RULE HEARING

June 20, 2023

A Notice of Proposed Rule was published in the *Florida Administrative Register* on May 30, 2023 (Vol. 49, No. 104, pp. 2025-2029), to advise the public of the proposed changes to Rule 12C-1.01915, and to provide that, if requested in writing, a rule hearing would be held on June 20, 2023. Requests were received, and a hearing was held on June 20, 2023. Written comments were received prior to the rule hearing and reiterated during the hearing.

The Department considered the comments received and, as a result, changes were made in a Notice of Change published in the *Florida Administrative Register* on August 4, 2023 (Vol. 49, No. 151, p. 2876), to Rule 12C-1.01915, F.A.C., removing the requirement that the taxpayer to which a credit may be transferred be a Class II or Class III railroad.

Comments were received from the Joint Administrative Procedures Committee on August 8, 2023. As a result of the comments received, additional amendments were made in a Notice of Change published in the *Florida Administrative Register* on August 14, 2023, (Vol. 49, No. 157, p. 2296), to Rule 12C-1.01915, F.A.C., to incorporate 26 C.F.R. s. 1.45G-1(b). All changes are included in the proposed rule text and materials incorporated by reference presented for approval to file and certify with the Department of State.

SUMMARY OF PUBLIC MEETING

September 18, 2023

The Governor and Cabinet, sitting as head of the Department of Revenue, met on September 18, 2023, adopted the proposed changes to Rule 12C-1.01915, and approved the filing and certification of the changes with the Department of State. A notice for the public meeting was published in the *Florida Administrative Register* on September 12, 2023 (Vol. 49, No. 177, p. 3343).

Comments were received from staff of the Joint Administrative Procedures Committee on October 16, 2023. As a result of the comments received, additional amendments were made in a Notice of Change published in the Florida Administrative Register on October 20, 2023, (Vol. 49, No. 205, p. 3944), to Rule 12C-1.01915, F.A.C., to provide the revision date of 26 C.F.R. s. 1.45G-1(b), a hyperlink to the regulation posted on the Department of State's website, and how the regulation may be obtained from the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
CREATING RULE 12C-1.01915

12C-1.01915 Credit for Qualified Railroad Reconstruction or Replacement Expenditures.

(1) Definitions. For purposes of this rule, the following terms mean:

(a) "Credit" means the credit for qualified railroad reconstruction or replacement expenditures authorized under Section 220.1915, F.S.

(b) "Qualified expenditures" means gross expenditures made in Florida by a qualifying railroad during the taxable year in which the credit is claimed, provided such expenditures were made for track that was owned or leased by a qualifying railroad, and were:

1. For the maintenance, reconstruction, or replacement of railroad infrastructure, including track, roadbed, bridges, industrial leads and sidings, or track-related structures which were owned or leased by the qualifying railroad; or

2. For new construction by the qualifying railroad of industrial leads, switches, spurs and sidings, and extensions of existing sidings located in Florida.

(c) "Qualifying railroad" means any Class II or Class III railroad operating in Florida on the last day of the taxable year for which the credit is claimed, pursuant to the classifications in effect for that year as set by the United States Surface Transportation Board or its successor.

(2) Available Credits for Qualifying Railroads. For taxable years beginning on or after January 1, 2023, a credit equal to 50 percent of a qualifying railroad's qualified expenditures incurred in Florida during a taxable year is available against the Florida corporate income tax imposed by Chapter 220, F.S. However, the amount of the credit may not exceed \$3,500 multiplied by the number of miles of railroad track owned or leased in Florida by the qualifying railroad as of the end of the taxable year in which the qualified expenditures were incurred.

(a) The amount taken as a credit must be added to taxable income prior to computing the tax imposed by Ch. 220, F.S.

(b) For purposes of computing the credit limitation, double track is treated as multiple lines of railroad track. One mile of single track is equal to one mile, but one mile of double track is equal to two miles.

(c) The credit is allowed only once for each mile of railroad track in Florida in each taxable year. No two qualifying railroads may claim the same mile of railroad track in a taxable year.

(3) Application Process. To apply for available program credits, a qualifying railroad must submit a Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Application for Credit (Form F-11915, incorporated by reference in Rule 12C-1.051, F.A.C.) to the Department each taxable year, along with documentation demonstrating that the qualifying railroad's qualified expenditures meet the criteria to receive credits.

(a) If the qualifying railroad earned a federal credit under 26 U.S.C. 45G during the taxable year, the supporting documentation must include federal Form 8900 (Qualified Railroad Track Maintenance Credit) or its equivalent.

(b) If the qualifying railroad is a taxpayer under Chapter 220, F.S., it must submit Form F-11915 when it files its Florida Corporate Income/Franchise Tax Return (Form F-1120, incorporated by reference in Rule 12C-1.051, F.A.C.).

(c) If the qualifying railroad is not a taxpayer under Chapter 220, F.S., it must submit Form F-11915 to the Department no later than May 1 of the calendar year following the year in which the qualified expenditures were made. If the May 1 due date falls on a Saturday, Sunday, or legal holiday, Form F-11915 will be considered timely if the form is postmarked or electronically submitted on the next succeeding day that is not a Saturday, Sunday, or legal holiday. The May 1 due date may not otherwise be extended.

1. Example: Qualifying railroad X is not a taxpayer under Chapter 220, F.S. Qualifying railroad X operates on a calendar year basis. X has qualified expenditures during calendar year 2023. X must apply for a credit by submitting Form F-11915 with the Department no later than May 1, 2024.

2. Example: Qualifying railroad Y is not a taxpayer under Chapter 220, F.S. Qualifying railroad Y operates on a fiscal year basis, with a January 31 year end. Y has qualified expenditures during the fiscal year beginning February 1, 2023, and ending January 31, 2024. Y must apply for a credit by submitting Form F-11915 with the Department no later than May 1, 2025.

(d) If the qualifying railroad is a disregarded entity for federal tax purposes, Form F-11915 must be submitted in the name of the owner of the disregarded entity.

(4) Determination of Carryforward or Transfer of Unused Credits. When a credit is not fully used during a taxable year, either because the qualifying railroad that earned the credit has insufficient tax liability or because the qualifying railroad is not a taxpayer under Chapter 220, F.S., the credit may be carried forward or may be transferred in accordance with subsection (5). The carryforward or transferred credit may be used in any of the 5 subsequent taxable years in which the credit was earned, when the tax imposed by Chapter 220, F.S., for that taxable year exceeds the credit for which the qualifying railroad or transferee is eligible in that taxable year, after applying the other credits and unused carryovers in the order provided by Section 220.02(8), F.S.

(a) If the qualifying railroad is a taxpayer under Chapter 220, F.S., the Department will notify the qualifying railroad by letter within 30 days after the receipt of a completed Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Application for Credit (Form F-11915), indicating the amount of credit that may be carried forward or transferred.

(b) If the qualifying railroad is not a taxpayer under Chapter 220, F.S., the Department will notify the qualifying railroad by letter within 30 days after the receipt of completed Form F-11915, indicating the amount of credit that may be transferred.

(c)1. Amounts that exceed the limitation of \$3,500 multiplied by the number of miles of railroad track owned or leased in Florida by the qualifying railroad as of the end of the taxable year in which the qualified expenditures were incurred, as provided in subsection (2), may not be carried forward to a subsequent taxable year or transferred.

2. Example: Qualifying railroad Corporation A is a taxpayer under Chapter 220, F.S., that incurs \$20,000 of qualified expenditures during its taxable year. Corporation A owns 2 miles of railroad track within Florida as of the end of its taxable year.

Corporation A's credit is equal to 50 percent of the \$20,000 qualified expenditures incurred in the taxable year but may not exceed \$3,500 multiplied by the number of miles owned or leased in Florida at the end of its taxable year.

Credit computation: $50\% \times \$20,000 = \$10,000$ but may not exceed \$7,000 ($\$3,500 \times 2$ miles of railroad track).

Therefore, Corporation A receives a \$7,000 credit for qualified railroad reconstruction or replacement expenditures.

The amount of computed credit exceeding the limitation amount ($\$3,000 = \$10,000 - \$7,000$) cannot be used, carried forward, or transferred.

When it files its Florida Corporate Income/Franchise Tax Return (Form F-1120), Corporation A has \$5,000 tax due after application of all credits required to be claimed prior to application of the credit for qualified railroad

reconstruction or replacement expenditures. Assuming the Department does not have to make any adjustments to Corporation A's Form F-1120, the Department will issue a letter to Corporation A indicating that the amount of credit available to carry forward or transfer is \$2,000 (\$7,000 - \$5,000).

(5) Transfer of credit. For taxable years beginning on or after January 1, 2023, an unused credit may be transferred. The transfer of a credit does not affect the time limit for taking the credit, and the credit is subject to the same limitations imposed on the transferor in accordance with subsection (4).

(a) Credits may be transferred to a taxpayer subject to the tax under Chapter 220, F.S., and that either transports property using the rail facilities of the qualifying railroad, or furnishes railroad-related property or services to any railroad operating in Florida, or is a railroad, as those terms are defined in 26 C.F.R. s. 1.45G-1(b) (March 18, 2018), and herein incorporated by reference (<http://www.flrules.org/Gateway/reference.asp?No=Ref-16071>). A copy of this regulation is available from the Department at https://floridarevenue.com/taxes/taxesfees/Pages/corp_tax_incent.aspx.

(b) The transferor is required to notify the Department of a credit transfer by submitting a Florida Credit for Qualified Railroad Reconstruction or Replacement Expenditures Notice of Intent to Transfer a Credit (Form F-11915T, incorporated by reference in Rule 12C-1.051, F.A.C.) to the Department within 30 days after the transfer. A separate notice must be submitted for each taxpayer receiving a transfer of credit.

(c) The Department will provide a letter to the transferor and transferee acknowledging the transfer of credit. The transferee must attach the letter to its Florida Corporate Income/Franchise Tax Return (Form F-1120) on which the credit is taken.

(6) Every taxpayer claiming a credit must retain documentation that substantiates and supports the credit until tax imposed by Chapter 220, F.S., may no longer be determined and assessed under Section 95.091(3) or Section 220.23, F.S. Documentation to substantiate and support the credit includes copies of: the completed credit application submitted to the Department; documentation related to any federal credit earned under 26 U.S.C. 45G; documentation related to any qualified expenditures incurred by the qualifying railroad, and the transfer letter issued by the Department reflecting the credit amount transferred.

Rulemaking Authority 213.06(1), 220.1915(7) FS. Law Implemented 220.02(8), 220.1915 FS. History—New 12-03-23.

CERTIFICATION OF MATERIALS INCORPORATED

BY REFERENCE IN RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify pursuant to Rule 1-1.013, Florida Administrative Code, that materials incorporated by reference in Rule 12C-1.01915 have been:


(1) Filed through the Department of State's e-rulemaking website at www.flrules.org.

(2) That because there would be a violation of federal copyright laws if the submitting agency filed the incorporated materials as described in option (1) above, a true and complete copy of the incorporated materials has been provided to the Department of State as outlined in paragraph 1-1.013(5)(c), F.A.C. Copies of the incorporated materials below may be obtained at the agency by [include address(es)/location(s)].

List form number(s) and form title(s), or title of document(s) below:

<u>Form Number</u>	<u>Form Title</u>
26 C.F.R. s. 1.45G-1(b) (March 28, 2018)	26 C.F.R. s. 1.45G-1(b) (March 28, 2018)

Under the provisions of Section 120.54(3)(e)6., F.S., the attached material(s) take effect 20 days from the date filed with the Department of State, or a later date as specified in the rule.



Signature, Person Authorized to Certify Rules

General Counsel

Title

From: FL-Rules@dos.state.fl.us
To: [Tonya Fulford](#)
Cc: flrules@dos.state.fl.us
Subject: 12C-1.01915 Reference Material for Rule Adoption Approved
Date: Wednesday, November 1, 2023 10:56:39 AM

Dear fulfordt:

The reference material for rule adoption you submitted has been approved by the Administrative Code and Register Staff.

The approved material is available in the [Review/Modify Agency Reference Material](#) list (Agency Main Menu page).

Rule Number: 12C-1.01915

Reference Number: Ref-16071; Reference Name: 26 C.F.R. s. 1.45G-1(b) (March 28, 2018)

Click [here](#) to log in.

Administrative Code and Register Staff
Florida Department of State