



Executive
Director
Leon M. Biegalski

November 17, 2017

Kenneth J. Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400

Attn: Jamie Jackson, Senior Attorney

Re: Florida Department of Revenue Rules
Rules 12A-1.004. .005, .038, .044, .060, and .097, F.A.C.

Dear Ms. Jackson:

This is in response to your letter dated November 1, 2017, providing comments and requesting revisions to the above referenced rules.

12A-1.038: Law Implemented

Comment: Pursuant to section 120.536(1), Florida Statutes, an agency does not have the authority to implement statutory provisions setting forth general legislative intent or policy. As such, section 212.021(2), should be removed as a law implemented by this rule.

Response: The Department believes your reference to section 212.021(2) was meant to be a reference to section 212.21(2), F.S. As such, a Notice of Change removing the law implemented reference for section 212.21(2), F.S., was published in the Florida Administrative Register on November 17, 2017 (Vol. 43, No. 223, p. 5233). A copy is attached for your reference.

12A-1.044(2)(a), (b):

Comment: Although there are no changes proposed to these paragraphs, proposed revisions to remove subsection (4) of this rule necessitate updates to these paragraphs to remove the references to its requirements.

Proposed Rule Amendments

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Response: A Notice of Change making the revisions to paragraphs (2)(a) and (b) to conform with the removal of subsection (4) was published in the Florida Administrative Register on November 17, 2017 (Vol. 43, No. 223, p. 5233). A copy is attached for your reference.

12-1.097(20):

Comment: Please insert “List” into the title of this incorporated document in the rule text to accurately reflect the title listed on the document itself.

Response: The title of the incorporated document does not contain the word “list.” The title of the document is “Florida Sales Tax Brackets Effective on all Leases and Licenses of Real Property Transactions Taxable under Section 212.031(1)(c), Florida Statutes.” However, upon review, the Department notes that the rule text is missing the word “Effective,” as well as an effective date, and published a Notice of Change in the Florida Administrative Register to make these corrections. The notice was published on November 17, 2017 (Vol. 43, No. 223, p.5233), and a copy is attached for your reference.

If you need additional information, please do not hesitate to contact me.

Sincerely,



Kimberly Berg
Agency Rules Coordinator

Attachments

Notice of Change/Withdrawal

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NOS.:RULE TITLES:

- 12A-1.038 Consumer's Certificate of Exemption; Exemption Certificates
12A-1.044 Vending Machines
12A-1.097 Public Use Forms

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 43 No. 202, October 18, 2017 issue of the Florida Administrative Register. The following changes are made in response to written comments received from the staff of the Joint Administrative Procedures Committee.

12A-1.038: Consumer's Certificate of Exemption; Exemption Certificates

No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 95.091(3), 212.02(4), (14)(c), 212.07(1), 212.08(6), (7), 212.085, 212.18(2), (3), ~~212.21(2)~~ FS. History—New 10-7-68, Amended 6-16-72, 9-28-78, 7-20-82, 4-29-85, Formerly 12A-1.38, Amended 8-10-92, 3-17-93, 9-14-93, 12-13-94, 10-2-01, 6-12-03, 7-31-03, 6-28-04, 11-6-07, 9-1-09, 5-9-13, 2-17-15, 1-11-16, ____.

12A-1.044: Vending Machines

(1) No change.

(2) All sales made through vending machines of food, beverages, or other items are taxed in the manner provided in Section 212.0515(2), F.S., except as provided in paragraphs (a) and (b). See subsection (2) of Rule 12A-15.011, F.A.C., for the effective tax rates for sales made through vending machines in counties imposing a discretionary sales surtax.

(a) Receipts from vending machines owned and operated by churches or synagogues are exempt. ~~Such entities are not required to post a notice as required in subsection (4).~~

(b) Food and drinks sold for human consumption for 25 cents or less through a coin-operated vending machine sponsored by a nonprofit corporation under s. 501(c)(3) or (4) of the Internal Revenue Code of 1986, as amended, are exempt. ~~The nonprofit corporation is not required to post a notice as required in subsection (4).~~

(c) No change.

(3) through (7) No change.

12A-1.097 Public Use Forms.

(1) through (19) No change.

Form Number	Title	Effective Date
(20) DR-2LLRP	Florida Sales Tax Brackets <u>Effective</u> on all Leases and Licenses of Real Property Transactions Taxable under Section 212.031(1)(c), Florida Statutes (R. 01/18) (http://www.flrules.org/Gateway/reference.asp?No=Ref-____)	01/18