



Executive  
Director  
Leon M. Biegalski

March 27, 2018

Mr. Ernie Reddick, 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 Mr. Reddick:

The following Department of Revenue Rules are presented for certification:

Rule 12A-1.012      Rule 12A-1.0144      Rule 12A-1.097

The following persons may be contacted regarding these rule certifications:

Tammy Miller      717-6309      [Tammy.Miller@floridarevenue.com](mailto:Tammy.Miller@floridarevenue.com)

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

Sincerely,

Kimberly Berg  
Agency Rules Coordinator

Attachments

Child Support – Ann Coffin, *Director* • General Tax Administration – Maria Johnson, *Director*  
Property Tax Oversight – Dr. Maurice Gogarty, *Director* • Information Services – Damu Kuttikrishnan, *Director*

<http://dor.myflorida.com/dor/>  
Florida Department of Revenue  
Tallahassee, Florida 32399-0100

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

I do 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 subsection 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 not 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 Executive Office of the Governor.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

12A-1.012

12A-1.0144

12A-1.097

Under the provision of subparagraph 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

Deputy Executive Director  
Title

6  
Number of Pages Certified

STATE OF FLORIDA  
DEPARTMENT OF REVENUE  
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE  
SALES AND USE TAX  
AMENDING RULES 12A-1.012 and 12A-1.097  
REPEALING RULE 12A-1.0144

12A-1.012 Repossessed Merchandise and Bad Debts.

~~(1) The full amount of tax on credit sales, installment sales, or sales made on any kind of deferred payment plan, shall be due at the moment of the transaction in the same manner as a cash sale.~~

~~(1)~~(2) Repossessions:

~~(a) The repossession of tangible personal property by the seller or the lienholder is not subject to tax.~~

~~(b) The redemption of repossessed tangible personal property by the debtor prior to the sale of the repossessed property is not subject to tax.~~

~~(c) The subsequent sale of repossessed tangible personal property is subject to tax.~~

~~(d)~~(a) A dealer who collected and remitted ~~has paid~~ sales tax to the Department ~~in full~~ on the selling price of tangible personal property sold under a retail installment, title loan, retain title, conditional sale, or similar contract in which the dealer retains a security interest in the property may, upon repossession of the property ~~(with or without judicial process)~~, take credit on a subsequent tax return ~~for~~, or obtain a refund of, that portion of the tax that is applicable to the unpaid balance of the contract. The credit or refund ~~is shall be~~ based on the ratio that the total tax bears to the unpaid balance of the sales price, excluding finance or other nontaxable ~~non-taxable~~ charges, ~~as reflected in the sales contract. A Refund or credit or refund~~ must be claimed within 12 months following the month in which the property was repossessed.

~~(e)~~(b) Tangible personal property (excluding motor vehicles): When a dealer claims a tax credit or a refund of tax paid on tangible personal property sold and repossessed, the dealer ~~by him, he~~ must complete a in detail Form DR-95A, Schedule of Florida Sales or Use Tax Credits Claimed on Repossessed Tangible Personal Property Repossessed (Form DR-95B, incorporated by reference in Rule 12A-1.097, F.A.C.), and certify thereon that he was the seller of the tangible personal property described therein; that Florida sales and use tax was remitted to the

Florida Department of Revenue; and that such property was repossessed by him. In those instances where the tangible personal property was financed by a third party, the dealer must show that he repurchased the contract before applying for a tax credit under this paragraph.

(e) Motor Vehicles:

(f)1. The When a dealer may claim claims a tax credit or refund on tangible personal property, including any aircraft, boat, mobile home, a motor vehicle, or any other titled property sold by the dealer for which the dealer holds a security interest in the property under the terms of a retail installment, title loan, retain title, conditional sale, or similar contract when:

1. The dealer sold the property and remitted him, he shall complete in detail Form DR-95B, Schedule of Florida Sales or Use Tax Credits Claimed on Repossessed Motor Vehicles (incorporated by reference in Rule 12A-1.097, F.A.C.), and certify thereon that he was the seller of the specifically described vehicle; that the Florida sales and use tax was remitted to the Florida Department of Revenue;

2. The dealer financed the property, or the property was financed by a financing institution with recourse;

3. The property was that he subsequently repossessed upon default of the terms of the contract by the purchaser of the property vehicle; and

4. The dealer acquired and that he reacquired ownership of the repossessed property (e.g., certificate of title or other evidence establishing possession and ownership of the repossessed property) thereof and acquired certificate of title thereto after default by the purchaser. Documents, such as copies of reacquired titles, shall be maintained by the dealer to support his claim for the tax credit.

(g)2. When claiming a tax credit or refund In those instances where the motor vehicle was financed by a third party, the dealer must shall complete a in detail Form DR-95B, Schedule of Florida Sales or Use Tax Credits Claimed on Repossessed Tangible Personal Property Motor Vehicles, (Form DR-95B, incorporated by reference in Rule 12A-1.097, F.A.C.). When claiming a tax credit, the completed Form DR-95B must be retained with the dealer's applicable sales and use tax return. When claiming a tax refund, a Sales and Use Tax Application for Refund (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), the completed Form DR-95B, and the information and documentation required to be included with Form DR-26S must be filed with the Department, and certify thereon that he was the seller of the specifically described vehicle; that the Florida sales and use tax was remitted to the Florida Department of Revenue; that he repurchased the contract; and that he received a repossession

~~title on each vehicle from the lender. (Repossession title, as used herein, means a title acquired by the lien holder- lender from the Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, and assigned by the lender to the dealer.) Documents, such as copies of repossession titles and checks to repurchase contracts, shall be maintained by the dealer to support the claim for tax credit.~~

~~(d) The information required on Forms DR-95A, Schedule of Florida Sales or Use Tax Credits Claimed on Tangible Personal Property Repossessed, and Form DR-95B, Schedule of Florida Sales or Use Tax Credits Claimed on Repossessed Motor Vehicles, shall include the following:~~

- ~~1. Customer's name;~~
- ~~2. Description of tangible personal property or motor vehicle identification;~~
- ~~3. Date tax remitted to Department by seller;~~
- ~~4. Amount of tax paid;~~
- ~~5. Sales price, less trade-in, less cash discount;~~
- ~~6. Sales price, less trade-in, less cash down;~~
- ~~7. Term of contract;~~
- ~~8. Amount of each monthly payment, excluding finance charges (item 6 divided by item 7);~~
- ~~9. Amount of sales tax included in each monthly payment (multiply amount in item 8 by the tax rate);~~
- ~~10. Number of unpaid installments at time of repossession by seller;~~
- ~~11. Tax credit due (multiply item 9 by item 10, less the collection allowance taken at the time the tax was originally paid to the state);~~
- ~~12. Date of repossession.~~

~~(h)(e) Dealers must retain documentation required to establish the right to a credit or refund, including the retail installment, title loan, retain title, conditional sale, or similar contract, and documents establishing ownership or title to the property after repossession. The records required in this subsection must be maintained by the dealer until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S., and must shall be made available to the Department upon request.~~

~~(3) No change.~~

~~(4) The sale of repossessed merchandise is taxable.~~

~~(5) If a dealer is reimbursed by a common carrier for damage to merchandise on which he has previously~~

paid tax, the dealer is entitled to a refund of such tax on the amount reimbursed. For example: The dealer paid his supplier \$500 for merchandise and remitted \$30 tax thereon to the state. Later, he was reimbursed \$100 by the carrier to cover damages to the goods. The dealer is entitled to a refund of \$6 overpayment of tax. If the carrier also reimburses the dealer for tax he has paid, then the dealer is not entitled to a tax refund.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.06(1), 212.13(2), 212.17(1), (2), (3), 212.18(2), 213.35, 215.26 FS. History—Revised 10-7-68, Amended 1-17-71, Revised 6-16-72, Amended 2-21-77, 9-28-78, 7-20-82, Formerly 12A-1.12, Amended 12-13-88, 2-16-93,\_\_\_\_\_.

12A-1.0144 Refund of Tax Paid on Purchases of Equipment, Machinery, and Other Materials for Renewable Energy Technologies.

(1) Who May Claim the Refund. Any applicant who has obtained a written certification issued by the Department of Agriculture and Consumer Services is eligible for a refund. The refund is based on Florida sales and use taxes previously paid on:

(a) Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E100), and other renewable fuels, including fueling infrastructure, transportation, and storage for these fuels; and,

(b) Gasoline fueling station pump retrofits for biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel distributions.

(2) Applying for the refund.

(a) To receive a refund of Florida sales and use taxes previously paid on eligible items, taxpayers must first file an application with the Department of Agriculture and Consumer Services.

(b) A Renewable Energy Technologies Sales Tax Return Application may be obtained by contacting the Office of Energy, Department of Agriculture and Consumer Services, 600 South Calhoun Street, Suite 251, Tallahassee, Florida 32399-0001, by telephone (850)617-7470, or by e-mail at [Energy@FreshFromFlorida.com](mailto:Energy@FreshFromFlorida.com).

(3) Obtaining the refund.

(a) To obtain a refund of Florida sales and use tax previously paid on eligible items, the applicant must file a completed Application for Refund Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), along with a copy of the written certification, with the Department of Revenue. Form DR-26S must be filed within 6 months from the date of the written certification issued by the Department of Agriculture and

Consumer Services, Form DR-26S, with a copy of the certification letter, should be mailed to:

Florida Department of Revenue

Refunds Process

P.O. Box 6490

Tallahassee, Florida 32314-6490.

(b) The amount of a refund claim is limited to the amount approved and certified by the Florida Department of Agriculture and Consumer Services.

(c) A refund will be issued within 30 days after the refund application is determined to be complete and the amount of the refund due is approved by the Department of Revenue.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.08(7)(hhh), 213.255 FS.

History—New 1-17-13, Repealed.

#### 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) through (b) No change.

Form Number	Title	Effective Date
(2)(a) DR-1	Florida Business Tax Application (R. <u>01/18 4/15</u> ) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-0925104849">http://www.flrules.org/Gateway/reference.asp?No=Ref-0925104849</a> )	<u>04/1801/15</u>
(b) DR-1N	Instructions for Completing the Florida Business Tax Application (Form DR-1) (R. <u>01/18 4/15</u> ) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-0925204851">http://www.flrules.org/Gateway/reference.asp?No=Ref-0925204851</a> )	<u>04/1801/15</u>
(c)	No change	
(3) through (12)	No change	
(13)(a) DR-95A	<del>Schedule of Florida Sales or Use Tax Credits Claimed on Tangible Personal Property Repossessed (R. 04/95)</del>	<u>06/01</u>
(b) DR-95B	<del>Schedule of Florida Sales or Use Tax Credits Claimed on Repossessed Tangible Personal Property Motor Vehicles (R. 01/18 12/09)</del> ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-09253">http://www.flrules.org/Gateway/reference.asp?No=Ref-09253</a> )	<u>04/1806/01</u>
(14) through (19)	No change	

Rulemaking Authority 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4., (n)4.,



(o)4., (7), 212.11(5)(b), 212.12(1)(a)2., 212.17(6), 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), 443.171(2), (7) FS. Law Implemented 92.525(1)(b), (3), 95.091, 119.071(5), 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 202.11(2), (3), (6), (16), (24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055, 212.06, 212.0606, 212.07(1), (8), (9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1), (4), (5), 212.12(1), (2), (9), (13), 212.13, 212.14(2), (4), (5), 212.17, 212.18(2), (3), 212.183, 213.235, 213.29, 213.37, 213.755, 215.26(2), 288.1258, 290.00677, 376.70, 376.75, 403.717, 403.718, 403.7185, 443.036, 443.121(1), (3), 443.131, 443.1315, 443.1316, 443.171(2), (7) 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,\_\_\_\_\_.

STATE OF FLORIDA  
DEPARTMENT OF REVENUE  
SALES AND USE TAX

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

AMENDING RULES 12A-1.012, 12A-1.0144, and 12A-1.097

SUMMARY OF PROPOSED RULES

The proposed amendments incorporate revisions to sales tax and use tax rules and forms.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The purpose of the proposed amendments to Rule 12A-1.012, F.A.C., is to: (1) remove the recitation of statutory provisions regarding the taxability of sales made on any kind of deferred payment plan; (2) clarify that the repossession and redemption of tangible personal property is not subject to tax; (3) consolidate provisions for obtaining a credit or refund of tax paid on repossessed items, including motor vehicles; (4) clarify when a tax credit or refund may be obtained by a dealer who sold property that is subsequently repossessed when the dealer holds a security interest in the property by contract; (5) provide how to obtain a refund or credit of tax paid on repossessed tangible personal property and the information and documentation required to establish the right to a refund or credit; and (6) remove unnecessary provisions for dealers that obtain payment from a common carrier for damages of items sold by the dealer.

The purpose of the proposed repeal of Rule 12A-1.0144, F.A.C., is to bring the rule into compliance with the expiration of Section 212.08(7)(hhh), F.S., effective July 1, 2016, which provided for a refund of sales tax paid for purchases of certain types of equipment, machinery, and other materials for renewable energy technologies.

The purpose of the proposed amendments to Rule 12A-1.097, F.A.C., is to (1) correct the title provided for Form DR-123, Affidavit for Partial Exemption of Motor Vehicle Sold to a Resident of Another State for Licensing Outside Florida; (2) consolidate two forms, Forms DR-95A and DR-95B, currently used to determine the amount of sales tax refund due on repossessed tangible personal property and repossessed motor vehicles, into a single form; (3) incorporate statutory elimination of the \$5.00 registration fee required of persons that submit a Florida Business

Tax Application (Form DR-1), as provided in Section 29 of Chapter 2017-36, L.O.F. and (4) incorporate statutory elimination of the \$30.00 registration fee required of owners or operators of drycleaning and dry drop-off facilities that submit a Florida Business Tax Application (Form DR-1), as provided in Section 42 of Chapter 2017-36, L.O.F.

#### FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

#### SUMMARY OF RULE DEVELOPMENT WORKSHOP

NOVEMBER 16, 2017

A Notice of Proposed Rule Development was published in the Florida Administrative Register on November 2, 2017 (Vol. 43, No. 213, pp. 4943-4944), to advise the public of the proposed changes to Rules 12A-1.007, 12A-1.012, 12A-1.0144, and 12A-1.097, F.A.C., and to provide that, if requested in writing, a rule development workshop would be held on November 16, 2017. No request was received by the Department and no workshop was held. No written comments were received by the Department for Rules 12A-1.012, 12A-1.0144, and 12A-1.097, F.A.C. The Department received public comments requesting significant changes to Rule 12A-1.007, F.A.C. To allow for adequate review and revision, the Department has removed Rule 12A-1.007, F.A.C., from the rule package at this time.

#### SUMMARY OF PUBLIC MEETING

DECEMBER 13, 2017

The Governor and Cabinet, sitting as head of the Department of Revenue, met on December 13, 2017, and approved the publication of the Notice of Proposed Rule for changes to Rules 12A-1.012, 12A-1.0144, and 12A-1.097, F.A.C. A notice for the public hearing was published in the Florida Administrative Register on December 5, 2017 (Vol. 43, No. 233, pp. 5473-5474).

#### SUMMARY OF RULE HEARING

FEBRUARY 7, 2018

A Notice of Proposed Rule was published in the Florida Administrative Register on January 16, 2018 (Vol.

44, No. 10, pp. 202-205), to advise the public of the proposed changes to Rule 12A-1.012, 12A-1.0144, 12A-1.097, F.A.C., and to provide that, if requested in writing, a rule hearing would be held on February 7, 2018. No request was received and no hearing was held. No public comments were received.

Written comments of a technical nature were received from the staff of the Joint Administrative Procedures Committee. A notice of change was published in the Florida Administrative Register on February 20, 2018, (Vol. 44, No. 35, p. 837), providing requested changes to forms DR-1, DR-1N, and DR-95B to include incorporative information for any promulgated materials mentioned in the forms. Technical changes have also been made to correct the effective date of the forms and to update the law implemented citations for this rule. The final rule language and materials presented for adoption today reflect these changes.

#### SUMMARY OF PUBLIC MEETING

MARCH 7, 2018

The Governor and Cabinet, sitting as head of the Department of Revenue, met on March 7, 2018, and approved the publication of the Notice of Proposed Rule for changes to Rules 12A-1.102, F.A.C., 12A-1.014, F.A.C., and 12A-1.097, F.A.C. A notice for the public hearing was published in the Florida Administrative Register on February 26, 2018 (Vol. 44, No. 39, pp. 928-929).

DEPARTMENT OF REVENUE  
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:

☒ (1) That materials incorporated by reference in Rule 12A-1.097, F.A.C., have been electronically filed with the Department of State.

☐ (2) That because there would be a violation of federal copyright laws if the submitting agency filed the incorporated materials described below electronically, a true and complete paper copy of the incorporated materials are attached to this certification for filing. Paper copies of the incorporated materials below may be obtained at the agency by \_\_\_\_\_.

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

Title

DR-1	Florida Business Tax Application
DR-1N	Instructions for Completing the Florida Business Tax Application
DR-95B	Schedule of Tax Credits Claimed on Repossessed Tangible Personal Property

Under the provisions of Section 120.54(3)(c)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

Deputy Executive Director  
Title

## Becky Avrett

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**From:** FL-Rules@dos.state.fl.us  
**Sent:** Thursday, March 22, 2018 2:28 PM  
**To:** Becky Avrett  
**Cc:** flrules@dos.state.fl.us  
**Subject:** 12A-1.097 Reference Material for Rule Adoption Approved

Dear avrettr:

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: 12A-1.097

Reference Number: Ref-09251; Reference Name: DR-1

Reference Number: Ref-09252; Reference Name: DR-1N

Reference Number: Ref-09253; Reference Name: DR-95B

Reference Number: Ref-09254; Reference Name: DR-1214DCP

Reference Number: Ref-09255; Reference Name: DR-5DCP

Click [here](#) to log in.

Administrative Code and Register Staff  
Florida Department of State

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 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.:

None

Rules covered by this certification:

Rule 12A-1.012, F.A.C.  
Rule 12A-1.0144, F.A.C.  
Rule 12A-1.097, F.A.C.

  
\_\_\_\_\_  
Signature of Agency Head

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Title