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Section IV
Emergency Rules

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.: 12AER22-5 RULE TITLE: Sales Tax Exemption for ENERGY STAR Appliances During the Period of July 1, 2022, through June 30, 2023

SUMMARY: Notice of Renewal of Emergency Rule 12AER22-5. This emergency rule implements the provisions of Section 49 of Chapter 2022-97, Laws of Florida, which provides a temporary sales tax exemption on the retail sale of new ENERGY STAR appliances for noncommercial use made during the period of July 1, 2022, through June 30, 2023.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Brinton Hevey, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone: (850)717-7754.

THE FULL TEXT OF THE EMERGENCY RULE IS:

12AER22-5 Sales Tax Exemption for ENERGY STAR Appliances During the Period of July 1, 2022, through June 30, 2023.

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

(a) "ENERGY STAR" means a product that is designated by the US Environmental Protection Agency and the US Department of Energy as meeting or exceeding each agency's

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requirements under the ENERGY STAR program and is affixed with an ENERGY STAR label.

(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 new ENERGY STAR appliances for noncommercial use.

(a) The following appliances are eligible for this exemption:

1. A washing machine selling for \$1,500 or less.

2. A clothes dryer selling for \$1,500 or less.

3. A water heater selling for \$1,500 or less.

4. A refrigerator or combination refrigerator/freezer selling for \$3,000 or less.

(b) The sales tax exemption applies only to eligible items purchased for noncommercial use and does not apply when the product is purchased for trade, business, or resale.

(3) Gift Cards.

(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.

(c) A gift card does not reduce the sales price of an item.

(4) Buy One, Get One for a Reduced Price. The total price of items advertised as “buy one, get one for a reduced price” cannot be averaged in order for both items to qualify for the exemption.

(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) Coupons, Discounts, and Rebates. The sales price of an item includes all consideration received by the retailer for that item. The price of an item is not limited to the amount paid by a customer.

(a) Manufacturer’s coupons do not reduce the sales price of an item, because the retailer is reimbursed for the amount of any discount provided to a customer. Therefore, the amount of the reimbursement is included in the taxable sales price of an item.

(b) Store coupons, discounts, or rebates offered by the retail seller reduces the sales price of an item because it reduces the total amount received by the retail seller for the item.

(c) Rebates occur after the sale and do not affect the sales price of an item purchased.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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 the item sold is exempt, the associated shipping charge is also exempt.

(12) Service Warranties. The taxation of any charges for a service warranty contract depends on the taxability of the product being sold. If the retail sale of an item is exempt from tax, the charge for a service warranty sold with the item is exempt.

(13) 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.

(14) Installation Charges. When an eligible ENERGY STAR appliance does not become a part of real property and remains tangible personal property when installed, any separately itemized charge for the installation of the product is a part of the sales price of the product and is exempt when the total sales price of the eligible ENERGY STAR appliance does not exceed the applicable threshold.

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

Rulemaking Authority Section 53, Chapter 2022-97, L.O.F. Law Implemented Section 49, Chapter 2022-97, L.O.F., 212.085, 213.37, F.S. History-New 05-09-22.

The Department of Revenue hereby provides notice of renewal of Emergency Rule 12AER22-5, Sales Tax Exemption for ENERGY STAR Appliances During the Period of July 1, 2022, through June 30, 2023., as adopted on May 9, 2022, and noticed in the Florida Administrative Register on May 10, 2022 (Vol. 48, No. 91, pp. 1947 - 1949). Section 53 of Chapter 2022-97, L.O.F., authorizes the adoption of an emergency rule, provides that the emergency rule is effective for six months after adoption, and allows for renewal of the emergency rule during the pendency of procedures to adopt permanent rules. On November 4, 2022 (Vol. 48, No. 216, p. 4515-4516), the Department published a Notice of Rule Development for Rule 12A-1.115, F.A.C., pursuant to Section 120.54(2), Florida Statutes, which, if adopted, would establish a rule addressing the subject of Emergency Rule 12AER22-5. Therefore,

pursuant to the provisions of Section 53 of Chapter 2022-97, L.O.F., Emergency Rule 12AER22-5 is renewed.

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: 11/09/2022

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