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DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.: 12AER22-6 RULE TITLE: 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

SUMMARY: Notice of Renewal of Emergency Rule 12AER22-6. This emergency rule implements the provisions of Sections 50 and 51 of Chapter 2022-97, Laws of Florida, which provide temporary sales and use tax exemptions for retail sales of children's diapers, and baby and toddler clothing, apparel, and shoes, 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:

12AER22-6 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.

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(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.

(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.

A

T Accessories (generally)

E Barrettes and bobby pins

E Belt buckles

E Bow ties

E Hairnets, bows, clips, and hairbands

T Handbags

T Handkerchiefs

T JewelryT Key casesE NeckwearE Ponytail holdersE ScarvesE TiesT WalletsT WatchbandsT WatchesE Aerobic and fitness clothingE Aprons and clothing shieldsT Athletic glovesT Athletic padsE Athletic supportersBE Baby clothesT Backpacks and bookbagsE BandanasE Baseball cleatsE Bathing suits, caps, and cover-upsE BeltsE BibsE Bicycle helmets (youth)**E BlousesE Boots (except ski or fishing boots)E Bowling shoesE Braces and supports worn to correct or alleviate a physical incapacity or injury*CT Chest protectorsE Choir and altar clothing*E Cleated and spiked shoesT Cloth, lace, knitting yarns, and other fabricsT Clothing repair items, such as thread, buttons, tapes, iron-on patches, or zippersE CoatsT Coin pursesE CostumesE CoverallsT Crib blanketsD-ET Diaper bagsE Diapers, diaper inserts, diapers for toilet trainingT Diving suits (wet and dry)E DressesT Duffel bagsT Elbow padsFT Fanny packsT FinsT Fishing boots (waders)E Fishing vests (nonflotation)T Football padsE Formal clothingGT Garment bagsT Gloves (generally)T BaseballT BattingT BicycleE DressE GardenT GolfT HockeyE LeatherT RubberT SurgicalT TennisT Goggles (except prescription*)E Graduation caps and gownsE Gym suits and uniformsHT Hard hatsE Hats and capsT Helmets (bicycle**, baseball, football, hockey, motorcycle, sports)E Hosiery and pantyhoseE Hunting vestsI-JT Ice skatesT In-line skatesE JacketsE JeansKT Key chainsT Knee padsLE Leggings, tights, and leg warmersE LeotardsT Life jackets and vestsT 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.

The Department of Revenue hereby provides notice of renewal of Emergency Rule 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, as adopted on May 9, 2022, and noticed in the Florida Administrative Register on May 10, 2022 (Vol. 48, No. 91, pp. 1949 - 1952). 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-1.113, F.A.C., pursuant to Section 120.54(2), Florida Statutes, which, if adopted, would establish a rule addressing the subject of Emergency Rule 12AER22-6. Therefore, pursuant to the provisions of Section 53 of Chapter 2022-97, L.O.F., Emergency Rule 12AER22-6 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

