



# facts on TAX

July 2009

The Florida Department of Revenue celebrates a milestone anniversary this month. Forty years ago, while Claude Kirk was governor, the Department was created by Senate Bill 650 (Chapter Law 69-106). The bill transferred functions from the state Revenue Commission, the comptroller, the state treasurer and the railroad assessment board to the new Department of Revenue as of July 1, 1969.

While much has changed in Florida in the past four decades, our commitment to the public has not. Our vision remains to be an agency that is **accessible** and **responsive** to citizens, provides **fair** and **efficient** tax and child support administration and achieves the highest levels of **voluntary** compliance.

We hope this publication will help you understand your tax obligations and comply with tax law.

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### Severance Taxes and Fees:

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Would you like us to notify you when we issue a new TIP? Would you like to know when we issue proposed rules and announce rule development workshops? Sign up for our [e-mail subscription service](#). It's fast, easy, and free!

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Current  
Topics

## Current Topics

for the Period: April 1 - June 30, 2009

### Important 2009 Legislative Changes

The Florida Legislature passed a number of laws this year that impact general tax. The Department of Revenue has issued Tax Information Publications (TIPs) for many of these changes and will issue more in the coming weeks. Our Internet site has a [list of TIPS](#) relating to the new laws.

Our Post Legislative Review, which will have a complete summary of all 2009 law changes, will be posted to our Internet site soon.

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## New Collection Processing Fee to Begin September 1, 2009

Beginning September 1, 2009, the Florida Department of Revenue will start collecting a fee on any outstanding debt older than 90 days. A new law imposes a 10 percent administrative collection processing fee on any debt from a “collection event” that is more than 90 days old. Revenue will also collect the fee on any future debts resulting from collection events that remain outstanding for more than 90 days after first notification. The fee is intended to recover the costs of collecting the debt and is in addition to penalties and interest.

The collection fee is equal to 10 percent of the total amount of tax, penalty, and interest owed, or \$10 for each collection event, whichever is greater. A “collection event” is defined as any time a taxpayer fails to:

- Timely file a complete return.
- Timely pay the full amount of tax reported on a return.
- Timely pay the full amount due resulting from an audit (after appeal rights have expired or the result has been determined to be final).

The collection fee will apply to all taxes and fees listed in section 213.05 and Chapter 443, Florida Statutes. To find out more, read [TIP 09ADM-02](#).

The legislation authorizing the fee, Senate Bill 1748, became law on May 27. [See Chapter 2009-67, Laws of Florida](#), for the complete text of the bill.

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## Discretionary Sales Surtax: Avoid Common Errors

Revenue’s mission is to make it as easy as possible for you to collect and pay your taxes. We want to help you avoid common filing errors that can cost you time and money. Periodically in *Facts on Tax*, we publish tips on how to avoid these errors. In this issue, we focus on discretionary sales surtax.

Discretionary sales surtax is a sales tax imposed by most Florida counties. The surtax, also called a local option county sales tax, applies to most transactions subject to sales or use tax. Sales tax dealers must collect discretionary sales surtax and the 6 percent state sales tax from the purchaser at the time of sale and send both taxes to the Department of Revenue.

When you sell, rent, deliver, or receive taxable items or services in a county with a surtax, you must calculate and collect the surtax using that county’s rate. This makes recordkeeping more complex, but Revenue has a [chart](#) that can help you determine when and at what rate to collect the surtax. We also publish a list of rates each year ([Form DR-15DSS](#)) and send a copy to all active sales tax dealers.

Different rules on the surtax rate apply to sales of motor vehicles, boats, aircraft, and mobile homes. One of the most common mistakes that sales tax dealers make is to incorrectly report the information and actual surtax collected in the surtax section of the return. Some simply enter the total collected but do not fill out the remainder of the section. Others enter the wrong amounts or do not fill out the section at all.

### **Why is discretionary sales surtax important?**

Revenue sends the surtax back to the counties for their use in funding local programs. The amount we distribute to a county is based on the surtaxes paid by sales and use tax dealers in that county, as well as the information entered on their returns. Failure to provide this information may result in less revenue for local governments. Wrong entries may result in a county receiving more or less than its fair share of surtax revenue. So if you make errors in reporting the surtax or omit information, you may be shortchanging your community. Therefore, it is important that you accurately collect, record, and report the discretionary sales surtax on your return.

### **Resources to help you do it right.**

If you are not sure you are calculating or reporting your tax correctly, or just need a refresher, please watch our new [discretionary sales surtax tutorial](#). This training has examples that show you how to fill out the DR-15 and DR-15EZ tax returns. It also has practice exercises.

If you have specific questions about discretionary sales surtax, you can search our [frequently asked questions database](#). If you can't find the answer there, call Taxpayer Services at 800-352-3671. Our service centers also provide walk-in assistance.

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## **Sales tax building blocks for real property contractors**

by  
French Brown

For sales tax purposes, Florida taxes the sale of tangible personal property; however, it does not tax the sale of real property. Therefore questions arise- when does an item become real property, and what are the sales tax liabilities for those who build, erect, construct, alter, improve, repair, or maintain real property?

Under the Florida sales tax statute, "tangible personal property" includes items that may be seen, weighed, measured, or touched. The statute defines "real property" as land, improvements, and any fixtures thereto. Many items used by real property contractors start as tangible personal property and become real property when installed. One of the best examples is lumber purchased from a store becoming real property once it is used to frame a house.

Fixtures are defined as items that are permanently attached to realty, such as a building or land but do not lose their identity when installed. To determine if an item is a fixture and therefore a real property improvement the following factors would be considered:

- Do the parties intend the item to be permanent? Is the item treated as realty for financial accounting purposes?
- How is the item attached to realty? Would its removal cause substantial damage?
- How does real property law view the item? Would a seller of real property be expected to leave the item as part of the realty? How do the terms of legal agreements describe the item?
- Is the item designed or customized to work on the realty?
- Does installation of the item require construction permits or licensing?

For sales tax purposes in Florida, it should be noted that industrial machinery and equipment are not treated as fixtures regardless of the method of attachment, and mobile homes are not fixtures unless assessed as real property with an “RP” decal.

Another example of real property would be a central heating and air conditioning system installed in a residential home. Central heating and air conditioning systems are attached to real property and connected to wires and ducting. They are intended to become a permanent part of a residential home, and a seller of a home would not be expected to remove them.

Contracts to build, erect, construct, alter, improve, repair, or maintain real property are generally on a lump sum, time and materials, cost plus, or guaranteed price basis. These types of contracts include a plumber charging an hourly rate to fix a clogged pipe, and a lump sum charge to patch a roof. Under these types of contracts, real property contractors do not sell tangible personal property to their customers. Therefore, they should **not** charge their customers sales tax.

Carpet, vinyl, tile, or wood flooring dealers that install using glue, tacks, or other permanent methods are improving real property. Flooring dealers who enter into contracts on a lump sum, time and materials, cost plus, or guaranteed price basis should not charge sales tax to their customers. These dealers owe tax on the purchase price of the carpet, pad, and installation materials, and the supplies and equipment used in the performance of the job.

Under the above types of contracts, the contractors are the ultimate consumers of the items and materials used to complete the contracts. Contractors either purchase or manufacture tangible personal property to complete these real property improvement and maintenance contracts. If contractors purchase items and materials from vendors, the contractors must pay sales tax calculated on the sales price. If contractors manufacture items to use in completion of real property contracts, the contractors must accrue a use tax based on the material, labor, services and transportation costs of a fabricated item.

Some contractors make retail sales of tangible personal property directly to their customers. An item of tangible personal property must be permanently attached before it can become real property; therefore, if the tangible item is sold and ownership transfers before attachment to real property, the contractor is in the business of selling tangible personal property.

Under this scenario, the contractor is a dealer and **must** collect and remit sales tax from its customer on this type of sale. Therefore, if, in the example above, a contractor sold and delivered a central heating and air conditioning system without attaching or being involved in the installation of the unit to real property, the contractor should charge their customer sales tax.

Although unlikely, a contractor may enter into a retail “sales plus” installation contract. This type of contract requires all materials and supplies used to complete the contract be specifically described and itemized at an agreed or retail price, and work or installation is separately billed at either an additional agreed price or on the basis of time consumed. Also, the customer must assume title and risk of loss on all materials and supplies as they are delivered, rather than accepting the completed work. Therefore, a roofer that wished to create a retail sales plus installation contract would be required to describe, itemize, and price each roofing tack, sheet of shingles, and other materials needed to complete the job. Under this scenario, sales tax **should** be charged to the customer on the total sales price of all materials and supplies.

When contracts provide for both the sale of tangible personal property and real property, the predominant nature of the “mixed” contract determines its taxability. Therefore, if some items of tangible personal property are routinely delivered by a contractor under a lump sum building contract, the predominant nature of the contract is for real property. Tax should **not** be collected from the customer, and sales or use tax should be paid by the contractor for the items of tangible personal property.

Contractors should register as dealers with the Department if they make sales of tangible personal property, or if they are required to remit tax on the cost of items fabricated. If contractors purchase all items and materials needed, they should pay sales tax at the time of purchase. If a contractor pays sales tax on its purchases of materials and subsequently sells those materials at retail in a manner described above that requires them to collect sales tax on the sale, the contractor may take a credit for the sales tax it previously paid on the purchase of such materials on its sales and use tax return.

The Department’s rule for how sales tax relates to real property contractors may be found in the Florida Administrative Code, Rule 12A-1.051.

For more information about the sales and use tax implications of improvements to real property, please contact the Department’s Technical Assistance and Dispute Resolution process at (850) 412-0718.

**French Brown is a Department of Revenue Attorney in Technical Assistance and Dispute Resolution.**

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## IRS NATIONWIDE TAX FORUMS

Register now to attend at least one of the 2009 IRS Nationwide Tax Forums to learn about the latest tax law updates and earn invaluable CPE credits! In addition to earning up to 18 CPE credits, you can become an Authorized IRS e-file Provider and see how e-Services can benefit your business. Plan to attend one of the many focus groups to let your voice be heard on hot topics affecting the tax practitioner community.

The tax forums also provide a great opportunity for you to navigate through certain tax forms via hands-on workshops, to find out about the latest in tax preparation software from a wide variety of on-site vendors, to network with other tax practitioners and to discuss, one-on-one with an IRS representative, your toughest, unresolved case. This year's IRS Nationwide Tax Forum will be held in Orlando, Florida from August 5 to August 7, 2009. We encourage you to take advantage of this great opportunity! For more information, please go to [www.taxforuminfo.com](http://www.taxforuminfo.com).

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## Voluntary Disclosure Program – Contact Change

Revenue's [voluntary disclosure program](#) allows individuals or businesses who have unpaid taxes to come forward and pay those taxes without penalty. Anyone who has a tax liability and has not been previously contacted by the Department about the liability is eligible for the program.

The point of contact for voluntary disclosure has changed.

### Mail requests to:

Compliance Support - Voluntary Disclosure Program  
Florida Department of Revenue  
P.O. Box 5139  
Tallahassee, FL 32399-5139

### Street address for overnight delivery:

Florida Department of Revenue  
Voluntary Disclosure Program  
5050 W. Tennessee St., Bldg. F  
Tallahassee, FL 32399

You may also fax requests to 850-245-5998.

If you have questions about the voluntary disclosure program, call John Merchant at 850-922-0387.

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## Online Training Can Help Tax Filers

Our tutorials and other training materials can help you understand your tax reporting and compliance responsibilities. These and other educational resources, such as the business owners' startup kit, are available [online](#), anytime. We continue to add information to our site, so check back often.

We also encourage you to [subscribe](#) to more of our publications, if you haven't already. In addition to *Facts on Tax*, you can get e-mail notices automatically when we post Tax Information Publications (TIPs), proposed rules, and notices of rule development workshops. We will add more subscription offerings in the future.

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News  
Releases

### News Releases

for the Period: April 1 - June 30, 2009

**April 21, 2009**

#### **RESTAURANT OWNER ARRESTED FOR THEFT OF STATE FUNDS**

The owner of two Leon county restaurants has been arrested on charges that she stole more than \$41,000 in sales tax she collected from customers, but failed to send in to the state, the Florida Department of Revenue announced.

Rosalba Colin Cabrera, also known as, Rosalba Mendoza, 37 of Tallahassee, was arrested by the Leon County Sheriff's Department on Monday, April 20 on a felony charge relating to theft of state funds. If convicted, she faces up to 10 years in prison and up to \$10,000 in fines, as well as possible repayment of stolen tax, interest, penalty and investigative costs. Ms. Cabrera owns and operated Cabrera's, Inc. doing business as Los Compadres Mexican Restaurant (now closed), 2690 North Monroe Street, and owns and operates Los Amigos Mexican Restaurant, 2736 Capital Circle, both in Tallahassee.

According to Revenue Department investigators, Ms. Cabrera routinely collected tax from customers at her business. However, during various periods in 2008, she failed to send in to the state all of the sales taxes that she had collected at the two locations. Investigators found that she had illegally kept tax money. Under state law, sales tax is the property of the state at collection.

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**April 21, 2009**

## **SECURITY GUARD BUSINESS OWNERS ARRESTED IN NEARLY \$790,000 TAX THEFT SCHEME**

The owners of a Miami-Dade County security guard business have been arrested on charges that they stole nearly \$790,000 in sales tax they collected from customers but failed to send in to the state, the Florida Department of Revenue announced.

Roger C. Hammer, 46, and Romi N. Hammer, 41, were arrested by members of the Florida Department of Law Enforcement and each charged with one count of Aggravated White-Collar Crime and three counts of grand theft. The investigation was conducted by the Department of Revenue and the Hammers will be prosecuted by the Attorney General's Office of Statewide Prosecution. Mr. and Mrs. Hammer face a maximum of 70 years in prison and a fine of \$30,000 each. The Hammers operated the National Security and Intelligence Agency, LLC, Miami, Florida.

Revenue Department investigators determined that the Hammers routinely collected tax from customers of their business, however, throughout the period between March 2004 and January 2008, the Hammers failed to send in to the state any of the sales taxes collected. Investigators found that the Hammers illegally kept \$789,148.05 in tax money. Sales tax is the property of the state at the time of collection, under state law.

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**April 28, 2009**

## **LOCAL RESTAURANT OWNER ARRESTED FOR THEFT OF SALES TAXES**

The former owner of a Jefferson County sub sandwich shop has been arrested on charges that she stole sales tax she collected from customers, but failed to send in to the state, the Florida Department of Revenue announced.

Demetria Melise Pope, 48, of Monticello, turned herself in to the Jefferson County jail on April 24, 2009 on a felony charge relating to theft of state funds. If convicted, she faces up to 5 years in prison and up to \$5,000 in fine, as well as possible repayment of stolen tax, interest, penalty and investigative costs. Ms. Pope owned and operated J.A.M. United doing business as Jake's Subs & Grill, 180 West Washington Street, Monticello.

Ms. Pope routinely collected tax from customers at her business. However, during various periods in 2007, she failed to send in to the state all of the sales taxes that she had collected. Investigators found that Ms. Pope had illegally kept more than \$6,900.00. Under state law, sales tax is the property of the state at the time of collection.

**According to Lisa Echeverri, Executive Director, Florida Department of Revenue, "Most Florida businesses do an excellent job of meeting the state's requirements for collecting and submitting sales tax, which pays for services Floridians need. Individuals who collect tax but do not send it in are stealing taxpayer dollars and gaining an unfair financial advantage over honest businesses. It's our job to ensure that Florida's tax laws are administered fairly."**

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## **Report Tax Violations**

If you have information about a tax law violation, you may report it to the Florida Department of Revenue. The Department will investigate information you provide about an individual or business that may be evading or violating Florida tax laws.

When you contact the Department to report an alleged tax violation, please be prepared to provide information about the business, the type of violation, and date when the violation occurred.

To report a tax violation:

- **Call**  
800-FL-AWARD (1-800-352-9273) in Florida, select option #3  
850-487-9987 if you are out of state
- **Fax**  
850-922-2906  
Attention: Tax Violations
- **E-mail**  
[taxviolations@dor.state.fl.us](mailto:taxviolations@dor.state.fl.us)
- **Write**  
Florida Department of Revenue  
Tax Violations — GTA  
PO Box 5139  
Tallahassee, FL 32399

## Compensation for Tax Information - Reward Program

In certain circumstances, you may also be eligible for a monetary reward. Rewards are not automatic — they are only awarded when an investigation proves that there was a violation and all monies are recovered by the Department. We will send you an Application for Compensation for Tax Information (DR-55) after we receive your report of a tax violation.

You may report a tax violation anonymously; however, you will not be eligible for a reward.

**Tax Laws** - Rewards for reporting tax violations are authorized by section 213.30, Florida Statutes, *Compensation for information relating to a violation of the tax laws* and Rule 12-18, Florida Administrative Code, *Compensation for Tax Information*. For more information, visit the [Florida Tax Law Library](#).

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RULES

### Rules Adopted/Repealed by Governor and Cabinet

for the Period: April 1 - June 30, 2009

#### Administrative

**12-14.003 REPEALED:** Remittance of Costs to the Department of Revenue

The repeal of this rule removes obsolete provisions that are no longer used by the Department for the remittance of funds collected under section 938.01, F.S., by the clerks of the court to the Department.

Adopted: 4/28/09 Effective: 6/1/09

**12-14.005 REPEALED:** Form for Remittance of Costs to the Department of Revenue

The repeal of this rule removes the adoption, by reference, of obsolete Form DR-143, Remittance of \$3.00 Additional Court Costs.

Adopted: 4/28/09 Effective: 6/1/09

**12-18.001** Authorization for Compensation

The amendments to this rule clarify the taxes, surtaxes, surcharges, and fees for which the Department is authorized to pay compensation for information on tax violations.

Adopted: 4/28/09 Effective: 6/1/09

**12-18.002** Eligibility to File Claim for Compensation

This rule is amended to provide that a completed Form DR-55, Application for Compensation for Tax Information, will establish the applicant's priority to any claim for compensation.

Adopted: 4/28/09 Effective: 6/1/09

**12-18.004** Submission of Information and Claims for Compensation

The amendments to this rule adopt revisions to Form DR-55 necessary to assure that only those informants authorized to receive compensation for information on tax violations are paid the authorized amount of compensation and update information on how to obtain a copy of the form from the Department.

Adopted: 4/28/09 Effective: 6/1/09

**12-18.008** Compensation for Vending Machine Violations

This rule is amended to update requirements for sending information on vending machine tax violations.

Adopted: 4/28/09 Effective: 6/1/09

**12-24.001** Scope of Rules

The amendments to this rule include the statutory provisions regarding the electronic filing of returns and information reports that track the movement of fuel in Florida and the statutory provisions regarding the electronic filing of Florida corporate income tax returns.

Adopted: 4/28/09 Effective: 6/1/09

### **12-24.002** Definitions

This rule is amended to add: a definition for "tax collector"; change the term "preparer" to "unemployment tax agent," to distinguish a person who prepares unemployment tax returns from a person who prepares tax returns in general; and remove definitions that are unnecessary. It also updates the list of taxes, surtaxes, surcharges, and fees administered by the Department that are included in the definition of "tax type" for purposes of the rule chapter.

Adopted: 4/28/09 Effective: 6/1/09

### **12-24.003** Requirements to File or to Pay Taxes by Electronic Means

The amendments to this rule update the list of tax types for which taxpayers are required to pay electronically, to file returns electronically, or to pay and file electronically and lower the annual threshold from \$30,000 or more annually in tax to \$20,000 or more annually in tax (for communications services tax, \$50,000 to \$20,000), as provided in sections 14 and 30, Chapter 2007-106, L.O.F. They also implement the provisions of section 206.485, F.S., which require taxpayers who report information for tracking movements of petroleum products in Florida to file tax returns and information reports electronically and incorporate the provisions of sections 30-32, Chapter 2007-106, L.O.F., which require those corporations that are required to file their federal income tax returns electronically to file their Florida corporate income tax returns electronically, using the Internal Revenue Service's e-File program. In addition, they provide that corporations that paid more than \$20,000 in corporate income/emergency excise tax must also file their Florida corporate income tax returns using the Internal Revenue Service's e-File program. The amendments provide the tax types that are required to be paid and filed electronically by tax collectors who collect public money and state that the Department will notify taxpayers and unemployment tax agents who initially meet the requirements to file and pay electronically at their last known address.

Adopted: 4/28/09 Effective: 6/1/09

### **12-24.004** Enrollment

This rule is amended to remove provisions that are redundant of Rule 12-24.005, F.A.C., and to provide that the Department will notify taxpayers and unemployment tax agents who initially meet the requirements to file and pay electronically and those that are voluntarily enrolled, but will be required to file and pay electronically. They also provide that the Department uses social security numbers as identifying numbers and is required to maintain social security numbers as confidential and remove the incorporation of Form DR-600, which will be incorporated into new Rule 12-24.011, F.A.C.

Adopted: 4/28/09 Effective: 6/1/09

**12-24.005** Methods of Payment by Electronic Means

This rule is amended to remove an obsolete reference to use of the ACH credit method on January 1, 2003.

Adopted: 4/28/09 Effective: 6/1/09

**12-24.007** Electronic Payment Transmission Errors

The amendments to this rule remove provisions regarding the annual calendar of dates for electronic payments and returns provided by the Department.

Adopted: 4/28/09 Effective: 6/1/09

**12-24.008** Procedures for Payment

This rule is amended to change the terms "company and identification number" and "payment identification number" to "user information."

Adopted: 4/28/09 Effective: 6/1/09

**12-24.009** Due Date; General Provisions

The amendments to this rule provide that the Department will supply an annual calendar of dates for electronic payments and returns to assist taxpayers in meeting all statutory requirements for timely electronic payments and returns.

Adopted: 4/28/09 Effective: 6/1/09

**12-24.010** General Administrative Provisions; Voluntary Participation;  
Confidentiality; Granting of Waivers From Electronic Filing Requirements

The amendments to this rule remove the requirement that taxpayers request in writing to voluntarily participate in electronically paying and filing of taxes and tax returns and update the list of statutory references under which taxpayers can establish the grounds for a waiver from electronic filing requirements.

Adopted: 4/28/09 Effective: 6/1/09

**12-24.011** Public Use Forms

This rule is created to adopt, by reference, forms used by the Department in administration of the e-Services Program for paying taxes and filing returns electronically.

Adopted: 4/28/09 Effective: 6/1/09

**12-28.001** Scope

The amendments to this rule provide technical changes.

Adopted: 4/28/09 Effective: 6/1/09

**12-28.002** Definitions

This rule is amended to add or amend definitions for the terms "electronic funds transfer," "payment information," "return/remittance detail," "session," and "working day" and to remove definitions that are unnecessary.

Adopted: 4/28/09 Effective: 6/1/09

**12-28.003** Enrollment Procedures

This rule is amended to update the information on how a clerk of the court or his or her authorized designee is to enroll in the Department's e-Services program and how to obtain the enrollment form from the Department.

Adopted: 4/28/09 Effective: 6/1/09

**12-28.004** Transmitting Funds and Return/Remittance Detail to the Department

The substantial rewording of this rule updates the procedures for the electronic remittance of funds and the detailed remittance of information by the clerk of the court to the Department and provides current requirements to report transmission problems and to replace failed payments.

Adopted: 4/28/09 Effective: 6/1/09

- 12-28.005**    **REPEALED:** Means of Communication to Report Payment Information  
**12-28.006**    **REPEALED:** Remittance or Transmission Problems  
**12-28.007**    **REPEALED:** Procedures for Payment

The substantial rewording of Rule 12-28.004, F.A.C., replaces the provisions of these three rules. These rules are repealed.

Adopted: 4/28/09    Effective: 6/1/09

**12-28.008**    Due Date; General Provisions

The substantial rewording of this rule clarifies that funds collected by the clerk of the court are to be remitted to the Department as follows: documentary stamp tax and nonrecurring intangible personal property tax are to be remitted weekly; court-related fees, service charges, court costs, and fines are to be remitted monthly; and the cumulative excess over the approved budget amount, as provided in section 28.36, F.S., is to be remitted annually on the last working day before December 31. The rule also provides information on how to obtain the annual calendar of due dates that is developed by the Department to assist the clerks in complying with their statutory requirements for the remittance of funds to the Department.

Adopted: 4/28/09    Effective: 6/1/09

**12-28.009**    Distribution of Funds Received by the Department

This rule is amended to provide that the Department will make the required entries in the state accounting system within two working days of receiving an accurate payment and that the Department will assist agencies in correcting errors in deposits to other agencies.

Adopted: 4/28/09    Effective: 6/1/09

## **Corporate Income Tax**

### **12CER09-01** Adjustments for Section 179 Expense and Special 50% Bonus

#### Depreciation

This emergency rule provides procedures for taxpayers subject to the adjustments contained in section 220.13(1)(e), F.S., for I.R.C. section 179 expense in excess of \$128,000 and special 50% bonus depreciation under I.R.C. section 168(k). It provides the additions that taxpayers are required to add back to the amount of the federal deduction claimed under I.R.C. section 179 that exceeds \$128,000 and the

subtractions that are available in each of seven tax years beginning with the year an addition is made under section 220.13(1)(e), F.S. The emergency rule requires taxpayers to maintain a schedule reflecting all adjustments made under section 220.13(1)(e), F.S., and provides that these adjustments do not affect the basis of the property. It requires taxpayers who filed their Florida corporate income tax returns and reported additions to tax for bonus depreciation, as provided in Emergency Rule 12CER08-31, to amend their Florida tax return and provides that penalty and interest will be compromised or waived when the differences between additions and subtractions result in additional tax due when an amended Florida corporate income tax return is filed. Finally, it provides when the subtractions under section 220.13(1)(e), F.S., are not to be included in a taxpayer's Florida corporate income tax return and when the deductions allowed under I.R.C. section 179 and for special 50% bonus depreciation are not required to be included in a taxpayer's Florida corporate income tax return.

Filed: 6/24/09

Effective: 6/24/09

## **Discretionary Sales Surtax**

### **12A-15.002 Surtax Brackets**

This rule is amended to update the information on how to obtain copies of tax rate tables and information from the Department.

Adopted: 4/28/09    Effective: 6/1/09

### **12A-15.010 The Sale of Food, Drink, and Tangible Personal Property at Concession Stands**

The amendments to this rule provide the applicable divisor rates for counties that may impose discretionary sales surtaxes at the rates of 1¾ percent or 2 percent for purposes of computing sales tax, plus surtax, due on sales by concessionaires at arenas, auditoriums, carnivals, fairs, stadiums, theaters, and similar places of business.

Adopted: 4/28/09    Effective: 6/1/09

### **12A-15.011 Coin-Operated Amusement and Vending Machines, and Other Devices**

The amendments to this rule provide the applicable divisors for counties that may impose discretionary sales surtaxes at the rate of 1¾ percent or 2 percent for purposes of computing the amount of sales tax, plus surtax, due on sales of food, beverages, and other items of tangible personal property made through vending machines and on charges for the use of amusement machines.

Adopted: 4/28/09    Effective: 6/1/09

## **12A-15.012** Alcoholic and Malt Beverages

This rule is amended to provide the applicable divisor rates for counties that may impose discretionary sales surtaxes at the rates of 1¾ percent or 2 percent to be used for purposes of computing sales tax, plus surtax, due on sales of alcoholic beverages. It also corrects the divisor for counties that may impose a surtax rate of 1¼ percent on sales of alcoholic beverages by dealers who do not sell mixed drinks and provides effective rates and applicable divisors for counties that may impose discretionary sales surtax at the rates of 1¾ percent or 2 percent for dealers who do sell mixed drinks.

Adopted: 4/28/09 Effective: 6/1/09

## **Insurance Premium Taxes, Fees and Surcharges**

### **12B-8.016** Retaliatory Provisions

The amendments to this rule update provisions regarding the Florida Insurance Guaranty Association Assessment that is to be included in the retaliatory tax computation.

Adopted: 4/28/09 Effective: 6/1/09

## **Motor and Other Fuels, and Pollutants Tax**

### **12B-5.020** Definitions; Specific Exemptions

The amendments to this rule update the definition of "alcohol" to remove the qualifications regarding the percentages of proof and purity. They also update the definition of "fuel" to include fuel grade ethanol that is manufactured, produced, sold, or purchased for use as a gasoline blending component, or for use in a motor vehicle, and define "fuel grade ethanol" as ethanol with no less than 1.97% gasoline. The amendments update the definition of "gasohol" to mean ethanol-blended fuel that contains not more than 91% gasoline, and the ethanol content must not be less than 9%.

Adopted: 4/28/09 Effective: 6/1/09

### **12B-5.030** Importers

This rule is amended to provide that any person seeking a Florida fuel license as an importer is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically. It also explains how importers who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirements and states that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

Adopted: 4/28/09 Effective: 6/1/09

#### **12B-5.040** Carriers

The amendments to this rule provide that any person seeking a Florida fuel license as a carrier is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically. They also explain how carriers who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirements and provide when electronic information returns are due to the Department and when hard-copy returns are due by carriers who are authorized to submit hard-copy returns to the Department.

Adopted: 4/28/09 Effective: 6/1/09

#### **12B-5.050** Terminal Suppliers

This rule is amended to provide that any person seeking a Florida fuel license as a terminal supplier is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically. It explains how terminal suppliers who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirements. It also states that terminal suppliers must submit electronic returns by electronic data interchange, as provided in the Florida Department of Revenue Motor Fuels Technical Implementation Guide - ANSI ASC X12 V.4030, and that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

Adopted: 4/28/09 Effective: 6/1/09

#### **12B-5.060** Wholesalers

The amendments to this rule provide that any person seeking a Florida fuel license as a wholesaler is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically. They also explain how wholesalers who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirements and provide when electronic information returns are due to the Department and when hard-copy returns are due by wholesalers who are authorized to submit hard-copy returns to the Department.

Adopted: 4/28/09 Effective: 6/1/09

#### **12B-5.070** Terminal Operators

This rule is amended to provide that any person seeking a Florida fuel license as a terminal operator is required to enroll in the Department's e-Services program to file information returns. It explains how terminal operators who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirements. It also states that terminal operators must submit electronic information

returns by electronic data interchange, as provided in the Florida Department of Revenue Motor Fuels EDI Technical Implementation Guide - ANSI ASC X12 V.4030.

Adopted: 4/28/09 Effective: 6/1/09

**12B-5.080** Exporters

The amendments to this rule provide that any person seeking a Florida fuel license as an exporter is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically. They explain how exporters who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirements. They also provide when electronic tax returns are due to the Department and when hard-copy returns are due by exporters who are authorized to submit hard-copy returns to the Department and state that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

Adopted: 4/28/09 Effective: 6/1/09

**12B-5.090** Local Government Users

**12B-5.100** Mass Transit Systems

These rules are amended to provide when electronic tax returns are due to the Department. They also state that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

Adopted: 4/28/09 Effective: 6/1/09

**12B-5.110** Blenders

The amendments to this rule provide that any person seeking a Florida fuel license as a blender is required to enroll in the Department's e-Services program to file returns and to make tax payments electronically. They explain how blenders who are not able to comply with the electronic filing requirements may obtain a waiver from the electronic filing requirements. They also provide when electronic tax returns are due to the Department and when hard-copy returns are due by blenders who are authorized to submit hard-copy returns to the Department and state that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

Adopted: 4/28/09 Effective: 6/1/09

### **12B-5.121** Temporary Licenses Issued Under a Declared Emergency

This new rule implements the authority granted in sections 15-17, Chapter 2007-106, L.O.F., for the Department to authorize the granting of temporary fuel and pollutants licenses when the Governor of Florida or the President of the United States has declared a state of emergency or major disaster in Florida or in any other state. It provides how fuel dealers may obtain a temporary license from the Department and when a temporary Florida fuel license will be granted by the Department and provides how to obtain an extension of the expiration date of a license and when an extension of the temporary license will be granted. It also specifies the Florida fuel taxes that must be collected and remitted to the Department by temporary importers, temporary exporters, and temporary carriers and provides how to report and remit fuel taxes to the Department and when the taxes and returns are due. Finally, it provides when a refund of previously paid Florida fuel taxes is available to temporary licensees and how to obtain the refund from the Department.

Adopted: 4/28/09 Effective: 6/1/09

### **12B-5.130** Refunds

The amendments to this rule provide that any person who uses motor fuel in vehicles or equipment for commercial aviation purposes may apply for a refund of the local option fuel tax, the State Comprehensive Enhanced Transportation System Tax (SCETS tax), and the fuel sales tax, imposed under paragraphs 206.41(1)(e), (f), and (g), F.S. They also state that fuel used in any vehicle or equipment driven or operated upon the public highways of Florida is not eligible for a refund.

Adopted: 4/28/09 Effective: 6/1/09

### **12B-5.150** Public Use Forms

The amendments to this rule adopt, by reference, new Form DR-156T, Florida Temporary Fuel Tax Application, used by applicants to obtain a temporary Florida fuel license and adopt, by reference, changes to fuel tax and pollutant tax returns and information reports that simplify and clarify instructions, designating each form as a 2009 form, and including the 2009 fuel tax rates. They also adopt, by reference, the new instructions for filing returns by electronic data interchange contained in the Motor Fuels EDI Technical Implementation Guide ANSI ASC X12 V.4030.

Adopted: 4/28/09 Effective: 6/1/09

**12B-5.375** Temporary Pollutant Importer License Issued Under a Declared Emergency

This new rule implements the authority granted in sections 15-17, Chapter 2007-106, L.O.F., for the Department to authorize the granting of temporary fuel and pollutants licenses when the Governor of Florida or the President of the United States has declared a state of emergency or major disaster in Florida or in any other state. It provides that no additional application is necessary to obtain a Florida temporary pollutants importer license when an application to obtain a Florida temporary importer license is made and provides how to obtain an extension of the expiration date of a license and when an extension of the temporary license will be granted. It also specifies the Florida pollutant taxes that must be accrued and paid to the Department and provides how to report and remit pollutant taxes to the Department and when the taxes and returns are due. Finally, it provides when a refund of previously paid Florida pollutant taxes is available to temporary licensees and how to obtain the refund from the Department.

Adopted: 4/28/09 Effective: 6/1/09

**12B-5.400** Producers and Importers of Pollutants

This rule is amended to provide that electronic payments are to be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C.

Adopted: 4/28/09 Effective: 6/1/09

**Sales and Use Tax**

**12A-1.029 REPEALED:** Labels and Other Printed Matter Sold to Manufacturers

This rule is repealed, moving provisions for sales of the following items to the substantial rewording of Rule 12A-1.040, F.A.C. : the sale of labels, name plates, and packing inserts used as packaging materials; the sale of direction sheets and instruction books or manuals that provide instructions and accompany the product for sale; and the sale of tangible advertising materials.

Adopted: 4/28/09 Effective: 6/1/09

**12A-1.036** Furniture and Storage Warehousemen

The amendments to this rule clarify that charges by warehousemen for moving, storing, packing, and shipping tangible personal property belonging to other persons are not subject to tax and provide that warehousemen who sell packaging materials and other items are required to register as dealers and collect sales tax on sales of taxable items. They also provide that the payment of a claim for damaged

merchandise is not a sale of tangible personal property. Warehousemen who operate a business location to sell tangible personal property must collect tax on such sales. Boxes, crates, and other materials used by warehousemen for moving, storing, packing, and shipping tangible personal property belonging to other persons are subject to tax.

Adopted: 4/28/09 Effective: 6/1/09

#### **12A-1.040 Containers and Other Packaging Materials; Gift Wrapping**

The substantial rewording of this rule provides a single administrative rule regarding the taxability of containers and other packaging materials and items that accompany a product for sale, the taxability of tangible advertising materials that accompany a product for sale, and the taxability of items used in gift wrapping. The provisions of the substantial rewording provide for the administration of sales and use tax for the following:

- Materials used for packaging tangible personal property for sale;
- Instructional materials that accompany the product when sold to customers;
- Tangible advertising materials that accompany the product to the customer;
- Containers used more than one time for packaging tangible personal property;
- Deposits charged for reusable containers and the taxability of those containers;
- Dunnage used to protect packages and cargo during shipment;
- Materials used by persons who are not required to collect tax for services provided to their customers; and
- Charges for gift wrapping and the taxability of materials used in gift wrapping.

Adopted: 4/28/09 Effective: 6/1/09

#### **12A-1.075 Deposits**

The repeal of this rule moves the provisions regarding the taxability of charges for returnable containers to the substantial rewording of Rule 12A-1.040, F.A.C.

Adopted: 4/28/09 Effective: 6/1/09

### **Secondhand Dealers / Secondary Metals Recycler**

#### **12A-17.003 Registration**

The amendments to this rule provide that the Department will, upon the request of a local law enforcement official, release the name and address of any secondary metals recycler registered with the Department within the local official's jurisdiction.

Adopted: 4/28/09 Effective: 6/1/09

## Technical Assistance Advisements

for the Period: April 1 - June 30, 2009

Technical Assistance Advisements (TAAs) are written statements issued by the Department of Revenue, setting forth the Department's position on the tax consequence of a specific transaction or event under applicable statutes and rules. The TAAs are issued in response to written requests by taxpayers. Since the situation could apply to other taxpayers with the same situation, *Facts on Tax* publishes summaries of the TAAs. All TAAs listed in this publication are maintained in full text in the Florida Department of Revenue Tax Law Library. The library includes Florida tax statutes, administrative rules affecting taxes, technical advisories issued by the Department, and Tax Information Publications (TIPs). The Library can be accessed at [www.myflorida.com/dor](http://www.myflorida.com/dor).

### Corporate Income Tax

**Tax:** Corporate Income Tax

**Technical Assistance Advisement:** 09C1-001

**Issue:** Apportionment factor Used to Represent Taxpayer's Tax Base

**Statute Cite(s):** 220.152, Florida Statutes (F.S.)

**Rule Cite(s):** 12C-1.0152, Florida Administrative Code (F.A.C.)

**Question:** Does the standard apportionment factor represent the extent of a taxpayer's tax base attributable to Florida?

**Answer:** The taxpayer has not shown by clear and cogent evidence that Florida's consolidated apportionment calculation results in taxation of extraterritorial values. The taxpayer receives the benefits and protections of Florida law and has made an election to file on a consolidated basis, and there is no question that Florida may constitutionally tax the taxpayer's business as a whole. The taxpayer has not demonstrated that the apportionment formula operates unreasonably and arbitrarily in apportioning the taxpayer's consolidated income to Florida, or that the apportionment formula is inaccurate and does not fairly reflect the taxpayer's business activity in Florida. Therefore, the taxpayer is not entitled to alternative apportionment relief under section 220.152, F.S. The Florida consolidated apportionment factor, which the taxpayer elected to use, is not distortive, and does not tax extraterritorial values.

**Tax:** Corporate Income Tax

**Technical Assistance Advisement:** 09C1-002

**Issue:** Alternative Apportionment

**Statute Cite(s):** 220.152, Florida Statutes (F.S.)

**Rule Cite(s):** 12C-1.0152, Florida Administrative Code (F.A.C.)

**Question:** Is the taxpayer's request for alternative apportionment timely? If so, does the standard apportionment factor, which includes the payroll, property, and sales of the taxpayer represent the extent of a taxpayer's tax base attributable to Florida, given that some of its receipts are installment sale receipts from the sale of Texas real property, and some of its receipts are from royalties, generated outside Florida? If alternative apportionment is appropriate, is the taxpayer's alternative apportionment methodology of just using the receipts or sales factor appropriate in this situation?

**Answer:** The taxpayer's request for alternative apportionment for tax year ending December 31, 2005, was not filed in accordance with Rule 12C-1.0152, F.A.C. The taxpayer's request for alternative apportionment was not made timely and, therefore, was denied.

## **Documentary Stamp Tax**

**Tax:** Documentary Stamp Tax

**Technical Assistance Advisement:** 09B4-003

**Issue:** Conveyances from Owners to a Trust Where Husband and Wife are Beneficiaries for Their Lifetimes

**Statute Cite(s):** 201.02, Florida Statutes (F.S.)

**Rule Cite(s):** 12B-4.013(9), (22), (28), and (29)(a)(b), Florida Administrative Code (F.A.C.)

**Question:** For Documentary Stamp Tax purposes, how is the tax calculated on a transfer of deed conveying real property to a trust owned by husband and wife as beneficiaries?

**Answer:** Husband and wife jointly own a condominium that they wish to convey to their joint trust. The condominium is encumbered by a mortgage. Under s. 201.02, F.S., if a mortgage encumbers real property that is owned by two persons, in this case husband and wife, only minimum documentary stamp tax is due on recordation because there is no conveyance. The husband and wife owned it as individuals and they still own the property once it is in their joint trust.

Where only one of two parties has title to mortgaged property which is being conveyed to a trust for the both of these parties, documentary stamp tax is due on the 50% interest being transferred from the person now in title to the second person who is the second beneficiary of the trust. Therefore, 50% of the total outstanding principal mortgage balances existing on the property on the date of the assessed deed is the basis for the tax.

## **Intangible Personal Property Tax**

**Tax:** Intangible Personal Property Tax

**Technical Assistance Advisement:** 09B4-004

**Issue:** Exemption for State and Federal Credit Unions

**Statute Cite(s):** 199 and 213.12(2), Florida Statutes (F.S.)

**Rule Cite(s):** 12C-2.003(3), Florida Administrative Code (F.A.C.)

**Question:** Do State and Federal Credit Unions continue to be exempt for the imposition of intangible property owned or issued by credit unions, and is the exemption effected by the repeal of Rule 12C-2.003(3), F.A.C.?

**Answer:** Yes, they continue to be exempt to the extent that federally chartered credit unions have immunity from state and local taxation under the statutes of the United States. The exemption is not affected by the repeal of Rule 12C-2.003(3), F.A.C.

## **Sales and Use Tax**

**Tax:** Sales and Use Tax, Gross Receipts Tax

**Technical Assistance Advisement:** 09A-014

**Issue:** Net Metering

**Statute Cite(s):** 203.01, 212.05, and 212.08(7)(j), Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.039, Florida Administrative Code (F.A.C.)

**Question:** What are the tax consequences of net metering?

Net metering is a method of metering the energy consumed and produced at a home or a business that has its own renewable energy generator. Under net metering, excess electricity produced at a home or a business is used to offset the electricity received from a utility provider.

**Answer:** Taxpayer should remit the gross receipt tax based on the amount of money received from its customers for charges for utility services. This would be the net amount of electricity billed to the customer after allowing a credit for the excess electricity generated by the customer and returned to the utility.

The retail sale of electrical power or energy in the State of Florida is subject to sales tax. The incidence of the tax is on “charges for electrical power or energy,” and the tax rate for such sales is 7 percent. Therefore, if a customer is charged on the net electricity that it used during a particular billing cycle, the utility company should collect and remit the 7 percent sales tax on the amount billed to the customer.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-015

**Issue:** Purchase of Materials for a Public Works Contract

**Statute Cite(s):** 212.0896), Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.038 and 12A-1.094, Florida Administrative Code (F.A.C.)

**Question:** Are the procedures and contract provided sufficient to allow County to take advantage of its tax-exempt status on the purchase of materials for use in a public works contract?

**Answer:** The procedures and contract provided meet the legal requirement for the County to purchase materials tax exempt for incorporation into a public works contract.

The County is directly issuing the purchase order to the suppliers, is receiving the invoice directly from the suppliers, and is directly paying said suppliers. The title to the property is passing directly to the County at the time of delivery and the County is assuming the risk of loss.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-016

**Issue:** Purchase of Materials for a Public Works Contract

**Statute Cite(s):** 212.08(6), Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.038 and 12A-1.094, Florida Administrative Code (F.A.C.)

**Question:** Are the procedures and contract provided sufficient to allow City to take advantage of its tax-exempt status on the purchase of materials for use in a public works contract?

**Answer:** The procedures and contract provided meet the legal requirement for the City to purchase materials tax exempt for incorporation into a public works contract.

The City is directly issuing the purchase order to the suppliers, is receiving the invoice directly from the suppliers, and is directly paying said suppliers. The title to the property is passing directly to the City at the time of delivery and the City is assuming the risk of loss.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-017

**Issue:** Purchase of Materials for Public Works Contract

**Statute Cite(s):** 212.08(6), Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.038 and 12A-1.094, Florida Administrative Code (F.A.C.)

**Question:** Are the procedures and contract provided sufficient to allow School Board to take advantage of its tax-exempt status on the purchase of materials for use in a public works contract?

**Answer:** The procedures and contract provided meet the legal requirement for the School Board to purchase materials tax exempt for incorporation into a public works contract.

The School Board is directly issuing the purchase order to the suppliers, is receiving the invoice directly from the suppliers, and is directly paying said suppliers. The title to the property is passing directly to the School Board at the time of delivery and the School Board is assuming the risk of loss.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-018

**Issue:** Delivery and Setup Fees

**Statute Cite(s):** 212.02(16) and 212.05, Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.045, Florida Administrative Code (F.A.C.)

**Question:** Are the delivery and setup fees charged by the taxpayer subject to sales tax?

**Answer:** The setup fee charged on equipment that the taxpayer sells or rents to customers is subject to tax. When the setup fee is included as a part of the charge for delivery, then the lump sum amount charged for delivery and setup is subject to tax. Since the taxpayer's sales agreements and invoices are both silent regarding whether the customer has an option regarding the delivery of the equipment that is rented, charges for delivery of rented equipment are subject to tax. Since terms on the taxpayer's sales agreements, for equipment that is sold to customers, provides that the stated price is F.O.B. at the taxpayer's company location stated on the contract, the separately stated delivery charges made by the taxpayer for the sale of equipment are not subject to tax.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-019

**Issue:** Property Owners' Association Fees as Taxable Admissions Charges

**Statute Cite(s):** 212.02(1) and 212.04(1), Florida Statutes (F.S.)

**Rule Cite(s):** N/A

**Question:** Are mandatory fees imposed by a property owners' association to its members as a condition of occupancy, subject to sales tax?

**Answer:** The mandatory charge imposed by a property owners' association to its members as a condition of ownership or occupancy of real property, is not an admission charge, and is not subject to sales tax.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-020

**Issue:** Purchases by Nonprofit Entities

**Statute Cite(s):** 212.08, Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.038, Florida Administrative Code (F.A.C.)

**Question:** Is the portion of tangible personal property purchased or used by taxpayer in performing testing and diagnostic services for services exempt from Florida sales and use tax?

**Answer:** Taxpayer maintains a Section 501(c)(3), I.R.C., determination. Taxpayer's customary activity is medical treatment, research, and education. Taxpayer has and maintains a Florida Consumer's Certificate of Exemption under Rule 12A-1.038, F.A.C. Therefore, tangible personal property purchased by taxpayer with the Certificate of Exemption and used for medical treatment, research, and education is exempt from sales tax.

Taxpayer consumes the tangible personal property in the process of providing nontaxable professional medical services to Services, and Services does not purchase or take title to consequential tangible personal property. Therefore, taxpayer may purchase the items tax exempt for its customary activities using the Certificate of Exemption as long as it maintains its Section 501(c)(3), I.R.C., designation.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-021

**Issue:** Public Exemption

**Statute Cite(s):** 212.05 and 212.08(7)(w), Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.008, Florida Administrative Code (F.A.C.)

**Question:** Taxpayer publishes various directories containing information on local companies. The issue in this case is: Are charges for the fabrication costs of taxpayer's directories exempt from sales tax, pursuant to the exemption in section 212.08(7)(w), F.S., and Rule 12A-1.008(3), F.A.C., for free, circulated publications that are published on a regular basis, the content of which is primarily advertising and that are distributed through the mail, home delivery, or newsstands?

**Answer:** The directories meet the five discrete requirements under the statute and rule. They are: 1) free; 2) a circulated publication; 3) published on a regular basis from year to year; 4) composed of primarily advertising; and 5) distributed through the mail, home delivery, or newsstands. Therefore, the directories are exempt from sales and use tax.

**Tax:** Sales and Use Tax  
**Technical Assistance Advisement:** 09A-022  
**Issue:** Cleaning Services Performed on New Construction  
**Statute Cite(s):** 212.05(1)(i), Florida Statutes (F.S.)  
**Rule Cite(s):** 12A-1.0092, Florida Administrative Code (F.A.C.)

**Question:** Are construction cleaning services that involve the installation and removal of plastic “Tuff Wrap” (Product) during the construction process subject to sales tax?

**Answer:** The cleaning services performed during the construction phases of a building, which in this case consist of using Product to remove dust and debris from the construction site, and also cleaning the surrounding area after the Product has been removed, are not subject to sales tax.

**Tax:** Sales and Use Tax  
**Technical Assistance Advisement:** 09A-023  
**Issue:** Use Tax on Boats  
**Statute Cite(s):** 212.02(8) and (20), 212.05, 212.06(1), (2), (4), (6), (7), and (8), 212.21(2), and 325.58, Florida Statutes (F.S.)  
**Rule Cite(s):** 12A-1.007(2), 12A-1.007(9), and 12A-1.091(2)(a), Florida Administrative Code (F.A.C.)

**Question:** Is a boat purchased outside of Florida, and used outside of Florida for six months or longer subject to Florida’s use tax upon importation into Florida?

**Answer:** If a boat purchased outside of Florida and used under conditions, which give rise to the taxing jurisdiction of other U.S. states for six months or longer before being brought to Florida, and presuming the boat was not bought for use in Florida will not be subject to Florida sales or use tax when brought to Florida for use.

**Tax:** Sales and Use Tax  
**Technical Assistance Advisement:** 09A-024  
**Issue:** Purchase of a Motor Vehicle by a Nonfranchised Motor Vehicle Dealer  
**Statute Cite(s):** N/A  
**Rule Cite(s):** 12A-1.007(8)(d) and 12A-1.039(5), Florida Administrative Code (F.A.C.)

**Question 1:** Can the presumption contained in Rule 12A-1.007(8)(d), Florida Administrative Code, be rebutted by evidence that the purchasing dealer resold an untitled vehicle to a consumer?

**Answer:** The presumption created in Rule 12A-1.007(8)(d), F.A.C., cannot be rebutted solely by providing evidence that the purchasing dealer resold an untitled vehicle. The Department will also look to determine if the purchasing dealer used the vehicle for purposes other than demonstration or display that created a taxable use of the vehicle before the dealer resold the vehicle.

**Question 2:** Can the presumption contained in Rule 12A-1.007(8)(d), Florida Administrative Code, be rebutted by evidence that the purchasing dealer resold a titled vehicle to a consumer without first having used that vehicle in its business operations so as to render it a used vehicle?

**Answer:** The presumption created in Rule 12A-1.007(8)(d), F.A.C., can be rebutted by providing sufficient evidence that the purchasing dealer resold a titled vehicle without having used that vehicle in its business operations so as to render it a used vehicle. If the purchasing dealer did not use the vehicle for purposes other than demonstration or display before it resold the vehicle, it has rebutted the presumption created in this rule provision.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-025

**Issue:** Use Tax on Boat

**Statute Cite(s):** 212.06, Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.007(2) and 12A-1.007(9), Florida Administrative Code (F.A.C.)

**Question:** Is a Foreign Flagged vessel, used in Florida, under a cruising license issued pursuant to 19 CFR 4.94(b), subject the vessel the vessel owners to Florida's Use tax?

**Answer:** If a vessel purchased by a foreign corporate entity uses the vessel in Florida waters, or allows the use of the vessel in Florida waters, while under a valid license to cruise, issued pursuant to 19 CFR 4.94(b), Florida will not impose its use tax against the vessel or the vessels owner.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-026

**Issue:** Partial Refund of Purchase Price

**Statute Cite(s):** 212.17(1)(a), Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.014(14)(1), Florida Administrative Code (F.A.C.)

**Question:** When a customer returns merchandise and receives less than the original purchase price, is the customer entitled to a full refund of the sales tax based upon the original purchase price, or a partial refund of sales tax based upon the percentage of the original purchase price actually refunded to the customer?

**Answer:** When the customer is refunded a percentage of the sales price based upon the amount of time that the customer has had use of the merchandise, the taxpayer may only claim a refund of sales tax refunded based upon the percentage of the sales price refunded.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-027

**Issue:** Electricity – Residential Sales Tax Exemption

**Statute Cite(s):** 212.08(7)(j), Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.053, Florida Administrative Code (F.A.C.)

**Question:** Does the electricity that the taxpayer purchases for residential purposes from its utility company qualify for the sales tax exemption under section 212.08(7)(j), F.S.?

**Answer:** No. Unless the taxpayer's utility company reads each of the taxpayer's sub-meters to determine residential versus nonexempt use and invoices the taxpayer accordingly, tax is due to the utility company on the purchase of electricity by the taxpayer.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-028

**Issue:** Admissions

**Statute Cite(s):** 212.04(1), 212.02(1), and 212.05, Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.005(3)(j), Florida Administrative Code (F.A.C.)

**Question:** To what extent does sales and use tax apply with respect to the tournament fees charged by taxpayer to tour members and for admissions charges paid to the tournament host by taxpayer?

**Answer:** Taxpayer must collect the full tax on the tournament fees and annual fees collected from tour members pay tax to the tournament host for the admission. The taxpayer is entitled to a credit on its monthly return for the admissions paid to the tournament host. Taxpayer must pay tax on all of its purchases of all items including meals, trophies, gifts, drivers, clubs, wedges, and other items received by tour members.

**Tax:** Sales and Use Tax, Gross Receipts Tax

**Technical Assistance Advisement:** 09A-029

**Issue:** Net Metering

**Statute Cite(s):** 203.01, 212.05, and 212.08(7)(j), Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.039, Florida Administrative Code (F.A.C.)

**Question:** What are the tax consequences of net metering for electric cooperatives?

Net metering is a method of metering the energy consumed and produced at a home or a business that has its own renewable energy generator. Under net metering, excess electricity produced at a home or a business is used to offset the electricity received from a utility provider.

**Answer:** Taxpayer should remit the gross receipts tax based on the amount of money received from its customers for charges for utility services. This would be the net amount of electricity billed to the customer after allowing a credit for the excess electricity generated by the customer and returned to the utility.

The retail sale of electrical power or energy in the State of Florida is subject to sales tax. The incidence of the tax is on “charges for electrical power or energy,” and the tax rate for such sales is 7 percent. Therefore, if a customer is charged on the net electricity that it used during a particular billing cycle, the utility company should collect and remit the 7 percent sales tax on the amount billed to the customer.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-030

**Issue:** Real Property Rental – Port Authority Exemption

**Statute Cite(s):** 212.031(1)(a)8.a., Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.070(1)(a)7., Florida Administrative Code (F.A.C.)

**Question:** Are certain areas leased from a port authority subject to the exemption found in section 212.031(1)(a)8.a., F.S.?

**Answer:** The answer affirms taxpayer’s submitted designations, concerning taxability, under the applicable exemption statute.

**Tax:** Sales and Use Tax

**Technical Assistance Advisement:** 09A-031

**Issue:** Expanding Business

**Statute Cite(s):** 212.08(5)(b), Florida Statutes (F.S.)

**Rule Cite(s):** 12A-1.096, Florida Administrative Code (F.A.C.)

**Question:** Company is constructing a new state-of-the-art facility to replace an existing facility for the printing and publishing of newspapers. Which major areas and systems of the new facility may be considered as machinery and equipment qualifying for exemption from sales and use tax as an expanding business?

**Answer:** Based on the exemption statute and rule, and based on a tour made by Department personnel of a similar printing facility in 2005, it has been determined that twenty-six major areas or systems at the new facility fully or partially qualify for exemption.

## Severance Taxes and Fees

**Tax:** Severance Tax

**Technical Assistance Advise ment:** 09B7-001

**Issue:** Tertiary Oil

**Statute Cite(s):** 211.02, Florida Statutes (F.S.)

**Rule Cite(s):** 12B-7.004, Florida Administrative Code (F.A.C.)

**Question:** What is the correct rate of tax to be collected on the severance of taxpayer's oil?

**Answer:** Taxpayer severs oil using a certified tertiary method. Therefore, taxpayer's tertiary oil severance shall be taxed at five percent (5%) of gross value at the point of production.

\* \* \*

### For Information and Forms

To speak with a Department of Revenue representative, call Taxpayer Services, Monday through Friday, excluding holidays, 8 a.m. to 7 p.m., ET, at 800-352-3671.

Persons with hearing or speech impairments may call our TDD at 800-367-8331 or 850-922-1115.

For a written reply to **tax questions**, write:

Taxpayer Services  
Florida Department of Revenue  
5050 W Tennessee St Bldg L  
Tallahassee FL 32399-0112

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If you have questions or suggestions about this publication, contact Terry Branch at [brancht@dor.state.fl.us](mailto:brancht@dor.state.fl.us) or call 850-922-4840. If you have specific tax-related questions, call Taxpayer Services at 800-352-3671.

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