

**AGENDA**  
**FLORIDA DEPARTMENT OF REVENUE**

**MEMBERS**

Governor Charlie Crist  
Attorney General Bill McCollum  
Chief Financial Officer Alex Sink  
Commissioner Charles Bronson

**July 28, 2009**

**Contact: Jeff Kielbasa**  
**(850-922-5201)**

9:00 A.M.  
LL-03, The Capitol  
Tallahassee, Florida

<b>ITEM</b>	<b>SUBJECT</b>	<b>RECOMMENDATION</b>
1.	Respectfully request approval of the minutes of April 28, 2009.  <b>(ATTACHMENT 1)</b>	<b>RECOMMEND APPROVAL</b>
2.	Respectfully request approval and authority to publish a Notice of Intended Action in the Florida Administrative Weekly to: <ul style="list-style-type: none"><li>• Establish new procedures for adjusting the distribution of communication services tax proceeds to local governments (<i>Rule 12A-19.080, Florida Administrative Code/F.A.C.</i>).</li></ul> <b>(ATTACHMENT 2)</b>	<b>RECOMMEND APPROVAL</b>
3.	Respectfully request adoption and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes, amendments to state tax rules and forms to administer implementation of recent legislative changes and to clarify and simplify Department administrative procedures for better taxpayer understanding and compliance.	

Proposed Rules on State and Local Sales and Use Tax

- Groceries, food, and beverage sales: help businesses understand the tax status of these sales by providing revisions that simplify, clarify, and combine existing rules (*Rules 12A-1.011 and 12A-1.0115, F.A.C.*);
- Sales for resale: allow businesses to document a tax-exempt wholesale-level transaction by getting a resale authorization number before or at the time of a sale (*Rule 12A-1.039, F.A.C.*);
- Exemption certificates: clarify instructions on forms used by businesses to:
  - Get the Enterprise Zone job credit;
  - Use the special estimating tax provisions for boat, motor vehicles, and aircraft;
  - Verify if someone is authorized to make purchases of items for resale to someone else; (*Rules 12A-1.038 and 12A-1.097, F.A.C.*).

- State and local tax rate tables: update information on how to get these tables (*Rule 12A-1.004, F.A.C.*);
- Transient rental accommodations: revising information on how businesses can register multiple accommodations (*Rules 12A-1.060 and 12A-1.061, F.A.C.*);
- Direct pay permits: removes obsolete provisions, since these procedures are now governed by rules adopted by the Administration Commission (*obsolete Revenue Rule 12A-1.0911, F.A.C./ Administration Commission Rule Chapter 28-106, F.A.C.*).

#### Proposed Insurance Premium Tax Rules

- Administratively implement s. 14 of Ch. 2007-1, L.O.F. and s. 4 of Ch. 2008-220, Laws of Florida, which statutorily apply this tax to the self-insurance funds of:
  - Not for profit corporations; and,
  - Public housing authorities.
- Administratively implement recent litigation which provided that the dividends a policyholder uses to buy more paid-up insurance is not taxable as additional gross receipts of the insurance company;
- Administratively implement the statutory criteria taxpayers must meet to use the exceptions granted by law for the standard insurance premium tax salary credit;
- Add information about statutory credits associated with the Florida Life and Health Insurance Guaranty Association refund to the Department of Revenue;
- Explain that Florida law holds open the statute of limitations on insurance premium tax returns when there are subsequent changes to:
  - Assessments paid for unemployment compensation; and/or,
  - Corporate income taxes paid.
 (*Rule 12B-8.001, F.A.C.*).

#### Proposed Corporate Income Tax Rules

- Changes to Rule 12C-1.0222, F.A.C.:
  - Conform Florida's procedures to a recent change in the federal Internal Revenue Code that reduced from six to five months the extension period for filing a partnership return;
  - Administratively implement the Department of Revenue's statutory authority to require the electronic filing of Florida corporate income tax returns (*Rule 12C-1.0222, F.A.C.*);
  - Add provisions regarding the requirement to pay tentative corporate income tax—these provisions are transferred from Rule 12C-1.032, F.A.C.
- Repeal of Rule 12C-1.032, F.A.C.: is necessary due to the transfer of this rule's provisions to Rule 12C-1.0222, F.A.C., as discussed in the bullet directly above.

**(ATTACHMENT 3)**

**RECOMMEND APPROVAL**

# MEETING OF THE GOVERNOR AND CABINET AS HEAD OF THE DEPARTMENT OF REVENUE

April 28, 2009

## MINUTES

With Governor Crist presiding and all members present, the Department of Revenue was convened in LL-03, The Capitol

The following official actions were taken.

- ITEM 1.** Approved the minutes of March 10, 2009.
- ITEM 2.** Approved and granted authority to publish a Notice of Intended Action relating to insurance premium tax in the Florida Administrative Weekly to:
- administer implementation of recent legislation (Section 14 of Chapter 2007-1, and Section 4 of Chapter 2008-220, Laws of Florida);
  - make revisions identified during recent litigation; and,
  - make technical changes such as corrections to statute references and the removal of obsolete provisions
- ITEM 3.** Approved and granted authority to adopt, file and certify with the Secretary of State under Chapter 120, Florida Statutes, amendments to state tax rules and forms to administer implementation of recent legislative changes and to clarify and simplify Department administrative procedures for better taxpayer understanding and compliance.

### Proposed Rules on State and Local Sales and Use Tax/ Secondhand Dealers or Secondary Metals Recycler

- Clarify that dealers do not pay sales tax when they buy "one-time use" items that accompany products they sell (*Rules 12A-1.029, 12A-1.036, 12A-1.040, and 12A-1.075, Florida Administrative Code/F.A.C.*);
- Update the effective local sales surtax rates the Department provides to operators of amusement and vending machines, concession stand dealers, and dealers of alcoholic beverages (*Rules 12A-15.002, 12A-15.010, 12A-15.011, and 12A-15.012, F.A.C.*);
- Conform the rules to recent legislation allowing the Department to release the name and address of any registered secondary metals recycler when requested by a law enforcement official with jurisdiction. (*Rule 12A-17.003, F.A.C.*).

**ATTACHMENT #1**

### Proposed Fuel and Pollutant Tax Rules

Proposed revisions to rules to update provisions regarding:

- When an ethanol-product that is blended with gasoline is considered a fuel subject to Florida fuel taxes;
- Clarifying refunds of fuel taxes paid on motor fuel used in aviation ground support vehicles or equipment (Sections 1 and 2, Chapter 2007-31, L.O.F.);
- Issuing temporary fuel and pollutant licenses during a declared state of emergency to expand the number of dealers from which the public and dealers in other states can get fuel (Sections 15-17, Chapter 2007-106, L.O.F.) (*Rules 12B-5.020, 12B-5.121, 12B-5.130, 12B-5.150, and 12B-5.401, F.A.C.*)

### Proposed Insurance Premium Tax Rule

Update provisions concerning the computation of the part of the Florida Insurance Guaranty Association assessment that should be included in section 624.5091, F.S. Florida's retaliatory tax (*Rule 12B-8.016, F.A.C.*)

### Proposed Tax Reward Program Rules

Clarify what taxes, surtaxes, surcharges, and fees are eligible for the statutory reward program. This program offers compensation to the public for information on tax violations (*Rules 12-18.001, 12-18.002, 12-18.004, and 12-18.008, F.A.C.*);

### Proposed Rules on Clerks of the Court Remittance Requirements

Incorporate improvements to the Clerk of the Court electronic remittance system. These improvements updated and simplified the system (*Rules 12-14.003 and 12-14.005, F.A.C.; and, Rules 12-28.001, 12-28.002, 12-28.003, 12-28.004, 12-28.005, 12-28.006, 12-28.007, 12-28.008, and 12-28.009, F.A.C.*)

### Proposed Rules on Electronic Funds Transfer and Return Submission

- Administer implementation of recent legislation and update the procedures taxpayers use to electronically remit taxes and electronically submit associated tax returns. The statutes apply these electronic remittance and submission to most taxpayers who annually pay \$20,000 or more in taxes (*Rules 12-24.001, 12-24.002, 12-24.003, 12-24.004, 12-24.005, 12-24.007, 12-24.008, 12-24.009, 12-24.010, and 12-24.011, F.A.C.*);
- Update the method used by fuel dealers to electronically submit information to the Department for tracking the movement of fuel products as required by Florida law (*Rules 12B-5.030, 12B-5.040, 12B-5.050, 12B-5.060, 12B-5.070, 12B-5.080, 12B-5.090, 12B-5.100, 12B-5.110, 12B-5.150, and 12B-5.400, F.A.C.*)

July 17, 2009

**MEMORANDUM**

**TO:** The Honorable Charlie Crist, Governor  
Attention: Pat Gleason, Director of Cabinet Affairs

The Honorable Bill McCollum, Attorney General  
Attention: Rob Johnson, Cabinet Affairs

The Honorable Alex Sink, Chief Financial Officer  
Attention: Robert Tornillo, Chief Cabinet Aide  
Amber Hughes, Cabinet Aide

The Honorable Charles Bronson, Agriculture Commissioner  
Attention: Jim Boxold, Chief Cabinet Aide  
Cathy Giordano, Cabinet Aide

**FROM:** Jeff Kielbasa, Deputy Executive Director

**SUBJECT:** Requesting Approval to Hold a Public Hearing on a New Communications Services Tax Rule

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**What the Department is requesting:** Approval to publish a Notice of Proposed Rule to schedule a public rule hearing at the next stage of rulemaking on a proposed new rule for communication services tax.

**Why the creation of this communication services tax rule is necessary:**

- To administratively implement Section 202.18(3)(c), Florida Statutes, relating to distribution adjustments resulting from misallocation of tax;
- To establish procedures, scheduling, and review under Section 202.18(3)(c), Florida Statutes, for distributing adjustments to local governments resulting from misallocation errors.

**ATTACHMENT #2**

**What this new rule does:**

- Defines key terms;
- Explains that distribution adjustments can be required due to misallocations to any of the following components of this tax:
  - State portion;
  - Gross receipts tax portion;
  - Local portion.
- Establishes calculations to determine when the Department will make adjustments, based on specific factors, and give examples of how these determinations will be made;
- Enables local governments to request a review of the Department's documentation regarding distribution adjustments; and,
- Provides an annual schedule for these adjustments, and procedures for notifying affected local governments about adjustments to their distributions.

**Were comments received from external parties:** The Department held a rule development workshop on April 1, 2009. Comments were received from the public and changes were made to the proposed rule:

- The annual adjustment cycle was changed to run from February 1<sup>st</sup> through January 31<sup>st</sup>;
- Distribution adjustments will be combined into one electronic file on February 1<sup>st</sup>, instead of April 1<sup>st</sup>;
- General questions from affected parties concerning distribution adjustments must be received by the Department by March 1<sup>st</sup>, instead of May 1<sup>st</sup>, for each annual cycle; and,
- A final adjustment file will be posted by the Department on April 1<sup>st</sup>, instead of June 1<sup>st</sup>.

**Major administrative issues in this rule:** Establishes uniform procedures, scheduling, and review for making statutory adjustments to local government communications services tax distributions.

Attached are copies of:

- Summary of proposed rule
- Statement of facts and circumstances justifying the rule
- Federal relation statement
- Summary of workshop
- Proposed Notice of Intended Action with proposed rule text

STATE OF FLORIDA  
DEPARTMENT OF REVENUE  
CHAPTER 12A-19, FLORIDA ADMINISTRATIVE CODE  
COMMUNICATIONS SERVICES TAX  
CREATING RULE 12A-19.080

SUMMARY OF PROPOSED RULE

Proposed new Rule 12A-19.080, F.A.C. (Distribution Adjustments Resulting From Misallocation of Tax), provides local governments and other affected parties a process and timeline on what and how to expect distribution adjustments resulting from misallocation of tax to or between local governments and component parts of the communications services tax.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed Rule Chapter 12A-19.080, F.A.C. (Communications Services Tax), is necessary to establish and memorialize the process and procedures the Department will employ when making adjustments to and between the component parts of communications services tax so local governments and other affected parties have this to rely upon.

FEDERAL COMPARISON STATEMENT

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

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON APRIL 1, 2009

The proposed creation of Rule 12A-19.080, F.A.C. (Distribution Adjustments Resulting From Misallocation of Tax), was noticed in the Florida Administrative Weekly on March 6, 2009 (Vol. 35, No. 9, pp. 1052). A rule development workshop was held on April 1, 2009, in Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, FL, to allow members of the public to ask questions and make comments concerning the proposed rule. No written comments have been received by the Department.

**PARTIES ATTENDING**

For the Department of  
Revenue

JEFF KIELBASA, Deputy Director  
LARRY GREEN, Workshop Moderator  
VINCE ALDRIDGE, Deputy Director, Technical Assistance and  
Dispute Resolution  
GRACE REEVES, Revenue Program Administrator  
CARLA BRUCE, Tax Law Specialist

From the Public

SCOTT ROBIN, Weiss Serota Helfman Pastoriza Cole  
& Boniske, P.L.  
DAVID A. FRYE, Florida Association of Telecommunications  
Officer & Advisors  
SHARON FOX, City of Tampa  
MICHAEL MEERS, City of Tallahassee  
BETH BRIER, City of Tallahassee

WRITTEN COMMENTS    None

Ms. Carla Bruce, Department of Review, presented an overview of the timeline for the distribution of communications services reflected in proposed Rule 12A-19.080, F.A.C. (Distribution Adjustments Resulting From Misallocation of Tax). Mr. Vince Aldridge, Department of Revenue, provided background information regarding the requirements imposed on the Department by the law and reflected in the proposed rule. Ms. Bruce followed with a presentation of the provisions of the proposed rule.

Mr. Scott Robin, Weiss, Serota & Helfman, requested information regarding how the Department selects and performs audits of dealers of communications services. Mr. David Frye, Florida Association of Telecommunications Officer & Advisors, asked how the Department handled the misappropriation of the tax. Mr. Jeff Kielbasa, Department of Revenue, responded, clarifying that what is at issue is a misallocation of the tax, not a misappropriation.

The discussion continued regarding the Department's audit process, how taxpayers are selected for an audit, what is the audit frequency, how audits are conducted to account for local rates, and whether penalties are imposed for incorrect local situsing.

Ms. Sharon Fox, City of Tampa, requested that the Department consider changing the date the final distribution adjustment spreadsheet is posted on the local government website from July 1 of each year to April 1. The timeline proposed in the rule puts the final distribution file available as of July 1, a time beyond what is needed for final information for budgeting purposes on an annual basis. The final information is really needed by April 1 to accommodate the budgeting process and would be more advantageous to the local governments. Mr. Meers, City of Tallahassee, agreed with the proposal to change the date to April 1.

#### **CHANGES TO PROPOSED RULE 12A-19.080, F.A.C.:**

In response to public comments received at the rule development, the following changes were made to proposed new Rule 12A-19.080, F.A.C.:

- Subsection (1) has been changed to provide that the adjustment cycle will run from February 1 through January 31 of the subsequent year
- Paragraph (4)(a) has been changed to provide that the distribution adjustments will be combined into one electronic file on February 1, rather than April 1, and that all general

- Paragraph (4)(c) has been revised to provide that a final adjustments file will be posted on April 1, rather than June 1

## NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

COMMUNICATIONS SERVICES TAX

RULE NO.    RULE TITLE:

12A-19.080    Distribution Adjustments Resulting From Misallocation of Tax

PURPOSE AND EFFECT: Section 202.18(3)(c), F.S., requires the Department to make any adjustments to the distribution of proceeds of the local communications services tax that are necessary to reflect the proper amounts due to individual jurisdictions.

The purpose of the creation of Rule 12A-19.080, F.A.C. (Distribution Adjustments Resulting From Misallocation of Tax), is to develop procedures that will be used by the Department for determining when misallocations of communications services tax have occurred, for notifying the affected jurisdictions of the misallocations, and how distribution adjustments will be made.

SUMMARY: The proposed creation of Rule 12A-19.080, F.A.C. (Distribution Adjustments Resulting From Misallocation of Tax), provides local governments and other affected parties a process and timeline on what and how to expect distribution adjustments resulting from misallocation of tax to or between local governments and component parts of the communications services tax.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. Any person who wishes to provide information regarding regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 202.26(3)(a) FS.

LAW IMPLEMENTED: 202.18(3)(c), 202.22(5), 202.231, 202.35(3) FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: [To be determined upon approval.]

PLACE: Room 118, Carlton Building, 501 South Calhoun Street, Tallahassee, Florida.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least 48 hours before such proceeding by contacting Larry Green at (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Carla Bruce, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4839.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA  
DEPARTMENT OF REVENUE  
CHAPTER 12A-19, FLORIDA ADMINISTRATIVE CODE  
COMMUNICATIONS SERVICES TAX  
CREATING RULE 12A-19.080

12A-19.080 Distribution Adjustments Resulting From Misallocation of Tax.

(1) The purpose of this rule is to establish procedures when the Department determines that misallocations of communications services taxes require adjustments to distributions of the taxes. This determination will occur annually, with the adjustment cycle running from February 1 through January 31 of the subsequent year.

(2) DEFINITIONS: For purposes of this rule, the following terms are defined:

(a) “Distribution adjustments” are the reallocation of tax between local taxing jurisdictions or reallocation of tax distributed incorrectly to either the state, gross receipts or local portion of Communications Services Tax. This reallocation may be the result of incorrect local jurisdictional situsing, misapplication of tax on the return, or other filing errors causing tax misallocation.

(b) “Situsing” is the assignment of a service address to a local taxing jurisdiction.

(c) A “completed audit” is as an audit that has been paid and all formal or informal protest rights have been exercised or expired.

(3) DISTRIBUTION THRESHOLDS

(a) The Department’s determination will occur annually on or about November 15 and notice of this determination will be mailed to each affected local jurisdiction.

1. When the distribution adjustment is less than ninety percent (90%) of the average monthly distributions to the affected jurisdiction for the immediately preceding six months, the Department will make such adjustments in the month immediately following the Department's determination that misallocations occurred.

2.a. When the distribution adjustment is equal to or exceeds ninety percent (90%) of the average monthly distributions to the affected jurisdiction for the immediately preceding six months, the Department will make such adjustments beginning with the March distribution, unless affected jurisdictions seek another form of reallocation as described in sub-subparagraph

2.b. The adjustments will be made over a time period that equals the time period that the misallocations occurred.

b. Affected jurisdictions may seek another form of reallocation of proceeds other than by monthly Department distributions. The affected jurisdictions may execute a written agreement specifying a method of adjustment. A copy of the written agreement must be provided to the Department no later than the first day of the month following 90 days after the date the Department transmits notice of the misallocation.

(b) Example: A jurisdiction's average monthly distribution is \$10,000. The jurisdiction's sum total of adjustments for the adjustment cycle is (\$9,000). All adjustments are from audits with a 36-month audit period. The (\$9,000) will be allocated equally over a 36-month period with a monthly adjustment of (\$250). [(\$9000) / 36 months = (\$250)].

(c) Example: A jurisdiction's average monthly distribution is \$10,000. The jurisdiction's sum total of adjustments for the adjustment cycle is (\$8,000.00). The (\$8,000) adjustment will be made to the jurisdiction's December distribution.

#### (4) DISTRIBUTION ADJUSTMENT TIMELINE.

(a) On February 1, distribution adjustments will be combined into one electronic file organized by county and then jurisdiction within the county. For each local jurisdiction, the file will identify the taxpayer names, federal identification numbers, and the amount of the distribution adjustment. The file will be posted to the Local Government Communications Services Tax Information Sharing System. All local jurisdictions will have 30 days to review and make general inquiries regarding their proposed distribution adjustment. A local jurisdiction may make the inquiry to the Florida Department of Revenue, Local Government Unit, by mail at 5050 W. Tennessee St., Tallahassee, FL 32399-0100, or by e-mail to local-govt-unit@dor.state.fl.us, or by phone to (850)921-9181. All general inquiries regarding proposed distribution adjustments must be postmarked or otherwise time stamped or received by March 1.

(b) At any time, a local government may request to review adjustment documentation. Local governments who seek to review the documentation regarding their distribution adjustment(s) must submit a written letter specifying which adjustment(s) the local jurisdiction wishes to review. The letter must include:

1. The name of the local government;
2. The requestor's name, mailing address, phone number and email address;
3. The requestor's signature; and
4. Specification of which adjustment(s) by taxpayer name and federal identification number the local government is requesting to review. The federal identification number can be found in the Adjustment Distribution File or Distribution Data Download file posted on the Local Government Communications Services Tax Information Sharing System. The letter should be sent to the Florida Department of Revenue, Security and Disclosure Officer, P.O. Box 37372, Tallahassee, FL 32315-7372.

(c) On April 1, a final adjustments file will be posted to the Local Government Communications Services Tax Information Sharing System.

(d) On or about November 15, if the Department determines that misallocations have occurred, it will mail notification of this determination to each affected local jurisdiction.

(e) The December distribution of communications services tax will include adjustments for those jurisdictions whose net adjustments are less than ninety percent (90%) of the average monthly distributions to the affected jurisdiction for the six months immediately proceeding November 1.

(f) March Distribution of the subsequent year: For those jurisdictions whose net adjustments are equal to or in excess of the ninety percent (90%) of the average monthly distributions to the affected jurisdiction for the six months immediately preceding November 1, the first distribution adjustments will occur in March, unless the Department has received a written agreement specifying a different method of adjustment from affected jurisdictions by March 1.

(g) If any date specified above falls on a Saturday, Sunday, or federal or state legal holiday, the specific action will occur on the next succeeding workday.

(5) All information posted to the Local Government Communications Services Tax Information Sharing System for all jurisdictions to review is confidential taxpayer information pursuant to Section 213.053, F.S. This information shall not be distributed by the local government, except for use(s) as described in Section 213.053(8)(v), F.S.

Specific Authority 202.26(3)(a) FS. Law Implemented 202.18(3)(c), 202.22(5), 202.231, 202.35(3) FS. History–New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Carla Bruce, Tax Law Specialist,  
Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443,  
Tallahassee, Florida 32314-7443, telephone (850)922-4839.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: [To be  
inserted upon approval by the Governor and Cabinet of Florida.]

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: [To be determined upon  
approval.]

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The  
proposed creation of Rule 12A-19.080, F.A.C. (Distribution Adjustments Resulting From  
Misallocation of Tax), was noticed in the Florida Administrative Weekly on March 6, 2009 (Vol.  
35, No. 9, p. 1052). A rule development workshop was held on April 1, 2009, in Room 118,  
Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida, to allow members of the public to  
ask questions and make comments concerning the proposed rule. In response, changes were  
made to proposed subsection (1) and proposed paragraphs (4)(a) and (c) of the proposed rule.