

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE NO: RULE TITLE

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

12A-1.036 Furniture and Storage Warehousemen

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

12A-1.075 Deposits

PURPOSE AND EFFECT: The purpose of the proposed repeal of Rule 12A-1.029, F.A.C.

(Labels and Other Printed Matter Sold to Manufacturers) and Rule 12A-1.075, F.A.C.

(Deposits), the proposed amendments to Rule 12A-1.036, F.A.C. (Furniture and Storage

Warehousemen), and the proposed substantial rewording of Rule 12A-1.040, F.A.C. (Containers

and Other Packaging Materials; Gift Wrapping), is to: (1) consolidate and simplify provisions for

packaging materials excluded from tax, as provided in Section 212.02(14)(c), F.S., and other

materials that accompany a product for sale; (2) provide for the taxability of charges by, and

materials used by, warehousemen for moving, storing, packing, and shipping tangible personal

property belonging to other persons; and (3) provide for the taxability of charges for gift

wrapping and the taxability of materials used in gift wrapping.

Section 212.02(14)(c), F.A.C., currently provides that one-time use items that accompany

a product for the convenience of the customer are not subject to tax. Items accompanying food

products when sold to a customer, such as aluminum foil covering a baked potato, steak markers

used to indicate how a steak is cooked, toothpicks that secure a sandwich, and leftover bags

provided to customers are not subject to tax. However, Rule 12A-1.040, F.A.C., currently

provides that these items are subject to tax. This rulemaking is necessary to provide that these items are packaging materials that are not subject to tax.

In addition, Rule 12A-1.040, F.A.C., currently provides that “pallets for one-time use that are a part of packaging tangible personal property for shipment and sale are exempt.” This rulemaking is necessary to provide the criteria used to determine when pallets and other returnable packaging containers are not subject to tax.

SUMMARY: The proposed repeal of Rule 12A-1.029, F.A.C. (Labels and Other Printed Matter Sold to Manufacturers), moves provisions for sales of the following items to the substantial rewording of Rule 12A-1.040, F.A.C. (Containers and Other Packaging Materials; Gift Wrapping): (1) the sale of labels, name plates, and packing inserts used as packaging materials; (2) the sale of direction sheets and instruction books or manuals that provide instructions and accompany the product for sale; and (3) the sale of tangible advertising materials.

The proposed amendments to Rule 12A-1.036, F.A.C. (Furniture and Storage Warehousemen): (1) clarify that charges by warehousemen for moving, storing, packing, and shipping tangible personal property belonging to other persons are not subject to tax; (2) 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; (3) provide that the payment of a claim for damaged merchandise is not a sale of tangible personal property; (4) provide that warehousemen who operate a business location to sell tangible personal property must collect tax on sales of tangible personal property; and (5) provide that 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.

The proposed amendments to Rule 12A-1.040, F.A.C. (Containers and Other Packaging Materials; Gift Wrapping), provide 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. When in effect, the provisions of the substantial rewording will 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.

The proposed repeal of Rule 12A-1.075, F.A.C. (Deposits), moves the provisions regarding the taxability of charges for returnable containers to the substantial rewording of Rule 12A-1.040, F.A.C.

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: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.02(14), (15), (16), (18)-(21), 212.05(1), 212.06(1)(a), 212.07(1)(b), 212.08(7)(v), 212.18(3) FS.

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

DATE AND TIME: March 2, 2009, 10:00 a.m.

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 RULES IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407.

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULES 12A-1.036 AND 12A-1.040
REPEALING RULES 12A-1.029 AND 12A-1.075

12A-1.029 Labels and Other Printed Matter Sold to Manufacturers.

~~(1) Sales of labels or name plates to manufacturers, producers or wholesale merchants, and the printing thereon, where the purpose of the purchaser is to affix the label or name plates to his own product or container thereof are made for the purpose of resale and are exempt.~~

~~(2) Sales of packing inserts, individual folding boxes and set up boxes and the printing thereon to manufacturers or producers, to accompany their own manufactured products and to pass to the ultimate consumers upon final sales of the manufactured products contained or described therein shall be deemed made for the purpose of resale and are exempt.~~

~~(3) Sales of direction sheets, instruction books or manuals to a manufacturer, producer, wholesale or retail merchant, to be supplied with his product at no separate charge, are exempt. If a separate charge is made for such sheets, books, manuals or pamphlets, the manufacturer, producer, wholesale or retail merchant shall collect the tax from his purchaser.~~

~~(4) The sale, use, storage or consumption of all tangible advertising materials is taxable. Such tangible advertising materials shall include displays, display containers, brochures, catalogs, price lists, point of sale advertising and technical manuals or any tangible personal property which does not accompany the product to the ultimate consumer.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14), 212.05(1) FS. History-Revised 10-7-68, 6-16-72, Formerly 12A-1.29, Amended 4-2-00, Repealed _____.

12A-1.036 Furniture and Storage Warehousemen.

(1) Charges by warehousemen solely for Warehousemen customarily engaged in the business of moving, storing, packing, or and shipping tangible personal property belonging to other persons are performing services are not subject to tax and the gross proceeds derived therefrom are exempt. Crating, boxing, packaging and packing materials used by warehousemen in the performance of such services are purchased for use or consumption and are taxable and the seller of such materials to warehousemen shall collect and remit tax on such sales.

(2) Warehousemen who sell tangible personal property, such as boxes, crates, tape, and other packaging or shipping materials, are required to register with the Department as dealers and collect tax on their sales of taxable items. See Rule 12A-1.060, F.A.C., Registration. Sales by warehousemen of second hand furniture or other tangible personal property to which they have acquired title in cases where they hold themselves out to the public as being engaged in the business of selling such property, are taxable. Sales at auction made by warehousemen in order to satisfy the warehousemen's lien for claim on account of moving, storing or other service charge are deemed occasional sales and are exempt.

(3) Boxes, crates, shipping containers, packaging, pallets, dunnage (blocks, timber, and bracers used to hold in place or protect cargo during shipment), and other packaging or shipping materials purchased, used, or consumed by warehousemen when moving, storing, packing, and shipping tangible personal property belonging to other persons are subject to tax. Pallets purchased by warehousemen for use as outlined in paragraph (1) of this rule are taxable.

(4)(a)The payment of a damage claim by a warehousemen for damage suffered by merchandise in transit or in storage is not a sale of tangible personal property and is not subject to tax, even when the warehouseman retains the damaged property under settlement of the claim. Charges to warehousemen for repairs to damaged merchandise are subject to tax.

(b) Any warehouseman who maintains and operates a business location, such as a salvage depot, to sell merchandise, damaged merchandise, or merchandise acquired in settlement of a claim is required to collect tax on sales of such merchandise.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(15), (20), 212.05(1)(b), 212.08(7)(v) FS. History-Revised 10-7-68, 6-16-72, Formerly 12A-1.36, Amended _____.

(Substantial Rewording of Rule 12A-1.040 follows. See Florida Administrative Code for present text.)

12A-1.040 ~~Sales of Containers, Wrapping, and Other Packaging Packing Materials; Gift Wrapping and Related Products.~~

(1) SCOPE. This rule provides when items intended to accompany a product for sale are not subject to tax. Materials, containers, labels, sacks, bags, or similar items intended to accompany a product for sale are not subject to tax under the requirements provided in Section 212.02(14)(c), F.S., as outlined below.

(2) MATERIALS USED FOR PACKAGING PROPERTY FOR SALE.

(a) The sale, use, storage, or consumption of materials, containers, labels, sacks, bags, or similar items that are intended to accompany a product sold to a customer and to be used one time only for packaging tangible personal property for sale is not subject to tax when:

1. Delivery of the product would be impracticable because of the character of the contents; or

2. Such items are used for the convenience of the customer.

(b) The sale, use, storage, or consumption of materials, containers, labels, sacks, bags, or similar items used for packaging in the process of providing a service subject to tax under Chapter 212, F.S., is not subject to tax.

(c) Dealers who are registered with the Department may purchase materials, containers, labels, sacks, bags, or similar items intended to be used in the manner provided in paragraph (a) or (b) tax-exempt by issuing a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase, as provided in Rule 12A-1.039, F.A.C. Persons who are not required to register with the Department as a dealer under Section 212.18(3), F.S., must extend an exemption certificate to purchase such items tax-exempt. A suggested exemption certificate is provided in subsection (5) of Rule 12A-1.038, F.A.C.

(d) The following is a nonexhaustive list of materials that, when used as provided in paragraph (a) or (b), are not subject to tax:

1. Containers, such as bags, barrels, baskets, bottles, boxes, cans, carboys, cartons, cases, crates, cylinders, drums, kegs, pallets, racks, reels, sacks, skids, or spools.

2. Items used inside containers and packages to shape, stabilize, and protect the contents of the packaged tangible personal property, such as bubble wrap, excelsior, preservative materials, wax paper, wrapping papers, or waste paper.

3. Materials used to close or otherwise secure the containers, such as binding materials, carboys, cartons, cellophane, coating materials, cores, crates, glue, gummed tape, staples, strapping, string, tape, twine, wrapping paper, wire, or wire bands.

4. Materials used to provide instructions regarding the shipping of the container, such as gummed labels or tags.

(e) The sale, purchase, use, storage, or consumption of dunnage is subject to tax at the time of purchase. Dunnage is not delivered to the purchaser with the package and its contents, and it is retained by the transporter or shipper. “Dunnage” includes items that are used by the transporter or shipper under, outside, and between packages to protect the packages and their contents from damage, motion, shock, or breakage while being transported or delivered to the purchaser. Examples of dunnage are blocks, lumber, and other materials used for bracing, blocking, skidding, shoring, holding, or protecting cargo during transport.

(f) Examples:

1. Toothpaste may be sold at retail in a tube enclosed in a box. The tube of toothpaste is placed in a box that will accompany the toothpaste when sold to the consumer. Multiple units of boxes are placed in shipping containers by the manufacturer. Labels are placed on the shipping containers identifying the product and providing shipping instructions. The manufacturer then places the labeled boxes on a pallet and covers them with shrink-wrap for shipment. The pallets are not returnable to the manufacturer when the toothpaste arrives at its destination. The toothpaste manufacturer may purchase the tubing materials, boxes, shipping containers, labels, pallets, and shrink-wrap tax-exempt.

2. Coat hangers and garment covers that are delivered with the clothing to the purchaser are packaging materials that accompany the product sold to the customer. However, coat hangers and garment covers used on display racks in stores that are retained by the store do not accompany the clothing to the customer are subject to tax.

(3) PACKAGING MATERIALS USED WHEN NO TANGIBLE PERSONAL PROPERTY IS SOLD. The purchase of materials, containers, labels, sacks, bags, or similar items is subject to tax when purchased by any person who does not sell tangible personal property to its customers. For example, bags, boxes, hangers, wrapping paper, and twine purchased for use by a laundry, dry cleaner, or any other person not selling tangible personal property are subject to tax.

(4) MATERIALS USED FOR FURNISHING OR SERVING FOOD PRODUCTS OR BEVERAGES.

(a) Materials, containers, labels, sacks, bags, or similar items that accompany a food product or drink sold to a customer and are used one time only for packaging the food product or for the convenience of the customer are not subject to tax. The following is a nonexhaustive list of such items:

1. Bags for bread or produce; bag ties; egg cartons or crates; cardboard 6-pack and 12-pack lift cartons; skewers; ice, dry ice, and salt placed directly into the packaging container of perishable food; oil used to line the inside of meat packaging containers;

2. Paper, plastic, plastic-coated, styrofoam bags, boxes, bowls, cups, dividers, liners, lids, plates, platters, trays, and other similar food and beverage containers;

3. Aluminum foil served with food products; butter chips; single-use baking dishes; steak markers, toothpicks, toothpick frills, film wrap; disposable utensils, straws, stirrers, napkins, leftover bags, boxes, or other containers.

(b) Cups, straws, plastic stirrers, and similar items used to provide beverages or other food products free to customers are subject to tax. Such items are not used for furnishing or service food products or beverages for sale.

(5) LABELS, TAGS, AND INSTRUCTIONAL MATERIALS.

(a) 1. Labels, tags, and name plates, including the printing of these items, are not subject to tax when they remain affixed to tangible personal property offered for sale or affixed to the container containing tangible personal property prepared for shipment or delivery and:

a. Furnishes information as to the nature, quantity, maker, price, size, operation, or maintenance of the tangible personal property for sale; or

b. Furnishes information as to the destination or the carrying instructions for the package during shipment.

2. For example, shipping labels used on packages of tangible personal property purchased by customers containing a customer's name and address or carrying instructions, such as "Do Not Crush," "This Side Up," or "Fragile," are exempt.

(b) Bar codes and labels containing bar codes that are placed on packages by, or on behalf of, the transporter or shipper for purposes of tracking the movement of the package in transit are subject to tax.

(c) Labels, tags, and name plates that do not accompany tangible personal property for sale are subject to tax. For example, labels sold to businesses to be placed on their shelves or display racks are subject to tax.

(d) Price tags that accompany tangible personal property when sold to the retail consumer are exempt. Price tags retained by a retail merchant are subject to tax. Price tags attached to merchandise offered for sale that are removed from the merchandise and retained by the seller at the time of sale are subject to tax.

(e) Direction sheets, instruction books, pamphlets, or manuals that accompany a product to the final consumer and provide instructions on how to assemble, use, or care for the product

are exempt. Technical manuals that do not accompany the product to the final consumer are subject to tax.

(f) Brochures, catalogs, price lists, point-of-sale advertising that accompany products being sold to advertise other products for sale, and displays and display containers used to display items for sale are not materials used for packaging tangible personal property for sale and are subject to tax.

(6) DEPOSITS FOR REUSABLE CONTAINERS.

(a)1. Deposits charged for reusable containers, such as barrels, drums, kegs, pallets, or spools, that are to be returned by the purchaser to the selling dealer upon removal of the contents from the container are not subject to tax when:

a. The amount of the deposit is separately itemized on the purchaser's bill, invoice, or other tangible evidence of sale;

b. The total amount of the deposit is refunded to the purchaser when the container is returned to the selling dealer;

c. Title to the container is retained by the selling dealer;

d. The container is used only to contain the tangible personal property sold to the purchaser while in the process of delivery or conveyance to the purchaser; and

f. The selling dealer retains records to identify which customers are holding the containers and which customers have returned the containers.

2. Example: A manufacturer ships its products to purchasers on pallets. The contents of the shipment are secured to the pallets by wire banding. The pallets are designed by the manufacturer to be used for more than one shipment, bear the name of the manufacturer, and are assigned an inventory number. When the manufacturer ships merchandise to a customer, a

deposit is separately itemized on the customer's invoice to assure the return of the identified pallets. The separately itemized deposit is not subject to tax. The purchase or fabrication of the pallets by the manufacturer is subject to tax.

(b) See Rule 12A-1.087, F.A.C., for tax-exempt portable containers, or moveable receptacles in which portable containers are placed, when used for harvesting or processing farm products.

(7) CHARGES FOR PACKAGING MATERIALS. When charges for packaging materials are separately itemized from the sales price of tangible personal property on the customer's bill, invoice, or other tangible evidence of sale, the charge for packaging materials is a part of the sales price of the tangible personal property.

(8) GIFT WRAPPING.

(a) The total charge for gift wrapping merchandise is subject to tax, whether charged by the seller of the merchandise or by any other person. Materials, such as paper, ribbon, bows, or tape, used in gift wrapping merchandise may be purchased tax-exempt by a dealer registered with the Department. The purchasing dealer is required to issue a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase, as provided in Rule 12A-1.039, F.A.C.

(b) Tax is due on the materials used by the dealer in gift wrapping merchandise at no charge to the customer.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14)(b), (c), (15), (16), (18)-(21), 212.05(1)(b), 212.06(1)(a), 212.07(1)(b), 212.08(7)(v), 212.18(3) FS.

History-Revised 10-7-68, 6-16-72, Formerly 12A-1.40, Amended _____.

12A-1.075 Deposits. ~~If an article is sold in a returnable container and a deposit is posted to assure the return of the container, the sales tax does not apply to the deposit, but is to be applied to the selling price of the property sold. Cross Reference — Rule 12A-1.040, F.A.C.~~
Specific Authority 212.17(6), 212.18(2) FS. Law Implemented 212.02(15), (16), 212.06(1)(a) FS. History-Revised 10-7-68, 6-16-72, Formerly 12A-1.75, Repealed_____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULES:

Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on November 21, 2008 (Vol. 34, No. 47, pp. 6074-6075). A rule development workshop was conducted on December 9, 2008. No comments were received by the Department.