

NOTICE OF PROPOSED RULE DEVELOPMENT WORKSHOP

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE TITLE:	RULE NO:
Specific Exemptions	12A-1.001
Charges by Dealers Who Adjust, Apply, Alter, Install, Maintain, Remodel, or Repair Tangible Personal Property	12A-1.006
Sales by Architects, Interior Designers, and Interior Decorators	12A-1.0515

PURPOSE AND EFFECT: The purpose of the amendments to Rule 12A-1.001, F.A.C. (Specific Exemptions), and to Rule 12A-1.006, F.A.C. (Charges by Dealers Who Adjust, Apply, Alter, Install, Maintain, Remodel, or Repair Tangible Personal Property), is to remove guidelines regarding the taxability of fees charged by interior decorators or designers and the taxability of sales of tangible personal property that will be provided in Rule 12A-1.0515, F.A.C., as created.

The purpose of the creation of Rule 12A-1.0515, F.A.C. (Sales by Architects, Interior Designers, and Interior Decorators), is to provide guidelines to architects, interior designers, and interior decorators regarding fees charged for services rendered, for sales of tangible personal property in conjunction with services rendered, and for the performance of real property improvement contracts, including mixed contracts for tangible personal property and improvements to real property. The proposed new rule: (1) defines, for purposes of the rule, the terms “architect,” “interior designer,” and “interior decorator”; (2) provides guidelines and establishes criteria for when fees charged by an

architect, interior designer, or interior decorator for rendering services are not in conjunction with the sale of tangible personal property and not subject to tax; (3) provides guidelines for when an architect, interior designer, or interior decorator is required to collect tax on sales of tangible personal property, including services rendered in conjunction with the sale of such property; (4) provides that the total sales price subject to tax includes separately itemized charges or fees and provides examples of such taxable charges or fees; (5) provides guidelines regarding trade discounts received by an architect, interior designer, or interior decorator; (6) provides that sales of three-dimensional scale, working, or other models are subject to tax when title or possession is transferred to the client; (7) provides that models used to illustrate design concepts to a client without actual transfer of the model to the client are not sales of tangible personal property to the client; (8) provides that an architect, interior designer, or interior decorator who sells tangible personal property is required to register with the Department as a dealer; (9) defines the term “improvement to realty” and provides guidelines for the taxability of contracts for improvements to realty, including when an architect, interior designer, or interior decorator is required to pay sales or use tax on items used in the performance of such contracts; (10) provides guidelines for the taxability of mixed contracts for tangible personal property and improvements to realty; and (11) provides recordkeeping requirements, including records required to be maintained by an architect, interior designer, or interior decorator to establish the taxability of services rendered, sales of tangible personal property, and purchases of property used in the performance of their services.

SUBJECT AREA TO BE ADDRESSED: The subject of this workshop is the proposed guidelines provided to architects, interior designers, and interior decorators regarding the application of tax to their

services, their sales of tangible personal property, and the performance of real property contracts, including mixed contracts for tangible personal property and for improvements to real property.

Specific Authority 212.17(6), 212.18(2), 213.06(1), F.S.

Law Implemented 212.02(4), (10), (12), (13), (14)(a), (15), (16), (17), (19), (20), (21), 212.05, 212.06(1), (2), (5)(a)1., (14), 212.07(1), 212.08(6), (7)(f), (h), (q), (v), (x), (cc), 212.13(1), (2), (3), 212.18(3), 212.21(2), F.S.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 2:00 p.m., August 24, 2004.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT WORKSHOP 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 PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULES 12A-1.001 AND 12A-1.006
CREATING RULE 12A-1.0515

12A-1.001 Specific Exemptions.

(1) No change.

(2) STENOGRAPHERS SERVICE TRANSACTIONS.

~~(a)1. An interior decorator's fee is taxable as part of the selling price under Section 212.02(16), F.S., or as a part of the cost price under Section 212.02(4), F.S., and cannot be exempted as a professional or personal service charge when the transaction involves the sale of tangible personal property. This is true when the fee is paid in the form of a trade discount, as is the case when a supplier grants the decorator a trade discount and the decorator in turn bills the client for the full list price. The decorator fee is also taxable when it appears as an amount added to the decorator's cost when billed to the client for tangible personal property on a cost plus basis.~~

~~2. If the decorator's fee is solely for designing the interior and exterior decorative scheme or for advising his clients and recommending colors, paints, wallpaper, fabrics, brands, sources of supply, etc., and there is no sale of tangible personal property involved, then such fee would be exempt as a professional or personal service transaction.~~

~~3. In some instances, the decorator may receive a fixed sum, which is not in any way contingent upon the sale of tangible personal property to the same client. In such cases the decorator's fee cannot be considered as a part of the selling price of the property sold because there is no connection between the transactions.~~

~~4. If the decorator's client reimburses the decorator for the payroll cost of personnel on the decorator's payroll assigned to a specific project, the duties performed by such employees will determine whether or not this item is taxable. For example, if these employees were engaged in painting murals on walls, etc., the charge made for their services is exempt, whereas, if these employees fabricate tangible personal property such as making bedspreads or draperies then the charge for their labor is taxable.~~

~~(b) When an architect or engineer furnishes his client or customer with a scale, working, or other model the total amount he charges his customer therefor is taxable. This constitutes the sale of tangible personal property and is not exempt as an inconsequential element of a personal service transaction.~~

~~(e) No change.~~

~~(3) through (6) No change.~~

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(10), (12), (16), (20), (21), 212.05, 212.08(6), (7)(f), (h), (q), (v), (x), (cc) FS. History-Revised 1-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, Amended 7-19-72, 12-11-74, 5-27-75, 10-21-75, 9-7-78, 9-28-78, 10-18-78, 9-16-79, 2-3-80, 6-3-80, 7-7-80, 10-29-81, 12-3-81, 12-31-81, 7-20-82, 11-15-82, 10-13-83, 4-12-84, Formerly 12A-1.01, Amended 7-9-86, 1-2-89, 12-1-89, 7-7-92, 9-14-93, 5-18-94, 12-13-94, 3-20-96, 4-2-00, 6-28-00, 6-19-01, 10-2-01(1), (2), 10-2-01(2)-(7), 10-2-01(3)-(7), 8-1-02,_____.

12A-1.006 Charges by Dealers Who Adjust, Apply, Alter, Install, Maintain, Remodel, or Repair Tangible Personal Property.

(1) through (11) No change.

~~(12) Charges by an interior decorator are exempt when no materials or supplies are used.~~

(13) through (18) Renumbered (12) through (17) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4), (15), (16), (17), (20), 212.05(1), 212.06(1), (2), (5)(a)1., 212.08(7)(v), 212.21(2) FS. History-Revised 10-7-68, 6-16-72, 12-11-74, 12-31-81, Formerly 12A-1.06, Amended 7-7-92, 10-17-94,_____.

12A-1.0515 Sales by Architects, Interior Designers, and Interior Decorators.

(1) SCOPE. This rule is intended to clarify the application of tax to services performed by architects, interior designers, and interior decorators. This rule is also intended to clarify how tax applies to sales of tangible personal property, services that are included in the sales price of tangible personal property, the performance of real property contracts by such persons, and mixed contracts for tangible personal property and for the improvement of real property.

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

(a)1. “Architect” means any person required to be licensed with the Department of Business and Professional Regulation, as provided in Part I, Chapter 481, F.S., to engage in the practice of “architecture.” “Architecture,” as defined in Section 481.203(6), F.S., means the rendering or offering to render services in connection with the design and construction of a structure or structures which have as their principal purpose human habitation or use, and the use of space within and surrounding such

structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

2. “Architects” licensed with the Department of Business and Professional Regulation may practice “interior design.”

(b) “Interior designer” means any person who is required to be licensed with the Department of Business and Professional Regulation to practice interior design, as provided in Part I, Chapter 481, F.S. “Interior design,” as defined in Section 481.203(8), F.S., means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural elements of a building or structure. Examples of interior design are reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings.

(c) “Interior decorator” means any person who performs interior decorator services. “Interior decorator services,” as defined in Section 481.203(15), F.S., includes the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes.

(3) FEES CHARGED FOR SERVICES RENDERED.

(a) Fees charged by an architect, interior designer, or interior decorator for rendering services described under the licensing provisions of Chapter 481, F.S., are not subject to tax when no sale of tangible personal property occurs in conjunction with the services rendered. Structural plans, study designs, drawings, blueprints, or specifications furnished by the architect, interior designer, or interior decorator are provided as a part of the services rendered.

(b) Fees charged by an architect, interior designer, or interior decorator to his or her client are solely for services rendered and not in conjunction with the sale of tangible personal property to the client when all of the following conditions are met:

1. The fee is allocated in the contract to architecture, interior design, or interior decorator services;

2. The client is not obligated to purchase tangible personal property from the architect, interior designer, or interior decorator;

3. The architect, interior designer, or interior decorator does not transfer to the client title or possession of any tangible personal property that the architect, interior designer, or interior decorator designs or creates specifically for the client as part of the services rendered;

4. The client is obligated to pay the architecture, interior design, or interior decorator service fee regardless of whether the client purchases any tangible personal property from the architect, interior designer, or interior decorator under the contract;

5. The amount of the fee for architecture, interior design, or interior decorator services is not contingent upon whether the client purchases any tangible personal property from the architect, interior designer, or interior decorator or upon the sales price of any tangible personal property the client purchases from the architect, interior designer, or interior decorator;

6. The contract provides for separate pricing of any tangible personal property that may be purchased by the client from the architect, interior designer, or interior decorator; and

7. The fee for architecture, interior design, or interior decorator services is separately stated from the sales price of any tangible personal property on bills, statements, or invoices issued to the client for the

property.

(4) FEES FOR SERVICES RENDERED IN CONJUNCTION WITH SALES OF TANGIBLE PERSONAL PROPERTY.

(a) Architects, interior designers, and interior decorators are required to collect tax on the total sales price charged to the client on any sale of tangible personal property that does not become a part of real property.

(b) Fees charged by architects, interior designers, or interior decorators in conjunction with the sale of tangible personal property are a part of the total sales prices for the tangible personal property and are subject to tax.

(c) The total sales price of tangible personal property includes any separately itemized charges or fees for:

1. The cost of the property;
2. The design or creation of the property;
3. The cost of materials and supplies used in providing or installing the property;
4. The cost of labor or other services to deliver and install the property;
5. The recovery of losses incurred;
6. Any expenses incurred in providing the property to the client; and
7. Any profit or markup over the architect's, interior designer's, or interior decorator's costs or expenses factored into the price to the client.

(d) Trade discounts received by the architects, interior designers, or interior decorators from suppliers of tangible personal property that are not passed on to the client do not reduce the taxable sales

price of the property sold to the client.

(e) Any person who provides a three-dimensional scale, working, or other model as part of his or her services to a client is selling tangible personal property and is required to collect tax on the total sales price charged to the client, as provided in paragraph (c). This paragraph applies only if title or possession of the scale, working, or other model is transferred to the client and does not apply to models used to illustrate design concepts to a client without actual transfer of the model to the client.

(f) Architects, interior designers, and interior decorators that sell tangible personal property to their clients are required to register as dealers with the Department to collect and report sales and use tax. (See Rule 12A-1.060, F.A.C.) Registered dealers who sell tangible personal property may extend a copy of their Annual Resale Certificate to purchase items tax-exempt for purposes of resale to their clients and collect tax on the total sales price to the client.

(5) IMPROVEMENTS TO REAL PROPERTY.

(a) For purposes of this rule, “improvement to real property” includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

(b) Any person who enters into a contract for the improvement to real property is generally the ultimate consumer of materials and supplies used to perform such improvement to real property. However, when a contractor enters into a “retail sale plus installation contract,” the contractor, including architects, interior designers, or interior decorators, is selling tangible personal property to the client.

(c) A “retail sale plus installation contract” is a contract in which the contractor agrees to sell specifically described and itemized materials and supplies at an agreed price or at the regular retail price and to complete the work either for an additional agreed price or on the basis of time consumed. All the

materials must be itemized in the contract before the work begins. The provisions of this rule do not apply to retail sale plus installation contracts. Guidelines for such contracts are provided in paragraph (3)(d) of Rule 12A-1.051, F.A.C.

(d) When architects, interior designers, or interior decorators enter into contracts with their clients to furnish and install tangible personal property that becomes a part of real property, no tax is due on the contract price charged to the client. The architect, interior designer, or interior decorator is required to:

1. Pay sales or use tax on all tangible personal property the architect, interior designer, or interior decorator purchases to be incorporated into a real property improvement; and

2. Pay tax on the cost of all materials the architect, interior designer, or interior decorator fabricates for use in performing such contracts, as provided in Rule 12A-1.043, F.A.C.

(e) Architects, interior designers, and interior decorators are permitted to extend a copy of their Annual Resale Certificates to selling dealers to purchase items of tangible personal property that the architect, interior designer, or interior decorator will incorporate into real property tax-exempt when the applicable tax, as provided in paragraph (d), is paid directly to the Department.

(f) When the architect, interior designer, or interior decorator uses subcontractors to install tangible personal property that becomes a part of realty, the subcontractor is responsible for paying the applicable tax due on the materials and supplies purchased by the subcontractor and used in installing the items. When the architect, interior designer, or interior decorator furnishes items, materials, and supplies to the subcontractor for installation, the architect, interior designer, or interior decorator is required to pay tax on the items purchased and provided to the subcontractor.

(6) MIXED CONTRACTS.

(a)1. For the purposes of this rule, a “mixed contract” is a contract that includes both real property work and tangible personal property. A mixed contract is one that involves a real property improvement and also involves providing tangible personal property that remains tangible personal property and does not become a part of real property.

2. Taxability of a mixed contract depends on the predominant nature of the work performed under the contract and upon the contract terms. The determination of the predominant nature of a contract will depend upon the facts and circumstances of each case. Consideration will be given to the description of the project and the responsibilities of the architect, interior designer, or interior decorator as set forth in the contract. Consideration will also be given to the relative cost of performance of the real property and tangible personal property components of the contract.

(b)1. When a mixed contract clearly allocates the contract price among the various elements of the contract, and such allocation is bona fide and reasonable in terms of the costs of materials and nature of the work to be performed, taxation will be in accordance with the allocation. The elements of the contract that remain tangible personal property when installed will be treated as sales of tangible personal property. The elements of the contract that constitute improvements to real property will be treated as improvements to real property.

2. For example, an interior designer contracts to design the interior elements of a residence. The contract provides for separately stated prices for the installation of flooring, lighting, cabinetry, and other fixtures to be installed in the residence and for approved furnishings and accessories. The furniture and accessories remain tangible personal property. However, the flooring, lighting, cabinetry, and other fixtures become realty when installed. The interior designer may purchase the furniture and accessories

tax-exempt at the time of purchase by issuing a copy of its Annual Resale Certificate to the selling dealer and collect tax on the total sales price of the items charged to the client. The interior designer is required to pay tax on all the materials and supplies used to install the flooring, lighting, cabinetry, and other fixtures within the residence, and no tax should be charged to the client on the price of those portions of the contract.

(c) When the predominant nature of a mixed contract is a contract for improvements to real property and the contract does not allocate the purchase price as provided in paragraph (b), taxability will be determined as if the contract were entirely for improvements to real property, as provided in subsection (5).

(d) When the predominant nature of a mixed contract between an architect, interior designer, or interior decorator and the client is a contract for sales of tangible personal property and the contract does not allocate the purchase price as provided in paragraph (b), taxability of purchases and sales of tangible personal property by the architect, interior designer, or interior decorator will be determined entirely as sales of tangible personal property to the client, as provided in subsection (4).

(e) If an architect, interior designer, or interior decorator hires a subcontractor to provide a real property fixture or improvement, that subcontractor is required to pay tax on the subcontractor's purchases of tangible personal property incorporated into the improvement regardless of the predominant nature of the prime contract between the architect, interior designer, or interior decorator and the client.

(7) RECORDKEEPING REQUIREMENTS.

(a) Architects, interior designers, and interior decorators who provide architecture, interior design, or interior decorator services and make sales of tangible personal property that are not in conjunction with

services rendered to the same client must maintain copies of contracts, agreements, billings, invoices, and other documentation necessary to evidence that the charges for services rendered are not in conjunction with the sale of the property to the client. Architects, interior designers, and interior decorators must also maintain adequate records to establish the taxability of their services rendered, sales of tangible personal property, and purchases of property used in the performance of their services or in performance of contracts for improvement to real property until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Upon request, records must be made available to the Department.

(b) Electronic storage by the architect, interior designer, or interior decorator of required documentation through use of imaging, microfiche, or other electronic storage media will be sufficient compliance with the provisions of this subsection.

Cross Reference: Rule 12A-1.012, F.A.C.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(10)(h), (12), (13), (14)(a), (15)(a), (16), (19), (20), (21), 212.05, 212.06(14), 212.07(1), 212.13(1), (2), (3), 212.18(3)

FS. History-New _____.