

NOTICE OF PROPOSED RULE DEVELOPMENT WORKSHOP

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE TITLE:	RULE NO:
Schools Offering Grades K through 12; Parent-Teacher Associations; and Parent-Teacher Organizations	12A-1.0011
Admissions	12A-1.005
Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice	12A-1.011
Sales of Food Products Served, Prepared, or Sold in or by Restaurants, Lunch Counters, Cafeterias, Caterers, Hotels, Taverns, or Other Like Places of Business and by Transportation Companies	12A-1.0115
Sales of Containers, Wrapping and Packing Materials and Related Products	12A-1.040
Rentals, Leases, or License to Use Tangible Personal Property	12A-1.071
Public Use Forms	12A-1.097

PURPOSE AND EFFECT: The Department has assembled a working draft of proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), for the purpose of gathering input and comment from the public regarding sales of grocery items, meals, snacks, and drinks. The Department will propose the final changes to Rule Chapter 12A-1, F.A.C., only after we receive input at this rule development workshop and input from interested parties who are unable to attend the workshop. We welcome your involvement in the development of these proposed rule amendments. If you are unable to attend, you may send comments and input to: Richard

Parsons, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4838.

The purpose of the proposed amendments to Rule 12A-1.0011, F.A.C. (Schools Offering Grades K through 12; Parent-Teacher Associations; and Parent-Teacher Organizations), is to include meals or other prepared food products as examples of items sold for fund raising purposes.

The purpose of the proposed amendments to Rule 12A-1.005, F.A.C., is to provide that fees charged for entrance to a restaurant, tavern, night club, or similar place of business are subject to tax.

The purpose of the proposed substantial rewording of Rule 12A-1.011, F.A.C. (Sales of Food Products for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Drinking Water, Ice), is to clarify the application of tax on the sale of food products generally sold by grocery stores, convenience stores, supermarkets, bakeries, fish markets, produce markets, and other like places of business and on the sale of bakery products by bakeries, pastry shops, or like establishments. The provisions regarding the application of tax on food products generally served, prepared, or sold in or by restaurants, lunch counters, cafeterias, caterers, hotels, taverns, or other like places of business will be removed from the current rule and will be provided in Rule 12A-1.0115, F.A.C., as created. The current provisions of Rule 12A-1.011, F.A.C., are included in the substantial rewording of Rule 12A-1.011, F.A.C., or the creation of Rule 12A-1.0115, F.A.C., and, when necessary, are updated to be consistent with the provisions of Section 212.08(1), F.S., as amended by Chapter 98-408, L.O.F., regarding the taxability of food products.

The substantial rewording of Rule 12A-1.011, F.A.C., is intended to provide the

application of sales or use tax for the following: (1) examples of exempt food products for human consumption; (2) the exemption provided for food products prepared off the seller's premises when sold in the original sealed container or sliced into smaller portions; (3) bakery products when sold by bakeries, pastry shops, or like establishments that do not have eating facilities and bakery products when sold by such establishments that have eating facilities; (4) candy, gum, mints, and similar products; (5) food prepared on the seller's premises and sold for immediate consumption; (6) hot prepared food products; (7) sandwiches sold ready for immediate consumption; (8) novelty items and frozen dairy or nondairy products; (9) soft drinks, including nonalcoholic beverages, noncarbonated beverage made from milk derivatives, and beverages containing fruit or vegetable juices labeled under federal standards as containing less than 100% juice; (10) tea sold in liquid form; (11) drinking water, ice, and additives; (12) the exemption provided for samples or donated food products; (13) food stamps or vouchers issued under authority of federal law; (14) packages containing both exempt food products and taxable food products or other items; and (15) the exclusion from tax for items and materials used one time only for packaging food products.

The purpose of the proposed creation of Rule 12A-1.0115, F.A.C. (Sales of Food or Drinks Served, Prepared, or Sold in or by Restaurants, Lunch Counters, Cafeterias, Caterers, Hotels, Taverns, or Other Like Places of Business and by Transportation Companies), is to provide the application of sales or use tax for the following: (1) food products generally served, prepared, or sold in or by restaurants, lunch counters, cafeterias, caterers, hotels, taverns, or other like places of business; (2) food products when sold by such establishments that also maintain a separate department that includes groceries; (3) when tax is due on the purchase of, or the cost of furnishing, food products consumed in places where an admission is charged for entrance; (4)

when sales tax is to be collected on food products separately itemized and priced from the admission charge to a patron; (5) sales of meal tickets or coupon books and coupons or discounts for food products; (6) the exemption provided for donated food products; (7) when tax is due on complimentary food products; (8) food products sold or furnished by employers to employees; (9) food products sold by airlines, railroads (except Amtrak), vessels, or other transportation companies to their passengers while in Florida; (10) food products served, prepared, or sold by caterers and event planners; (11) purchases, leases, and rentals by caterers or event planners; (12) gratuities consistent with the guidelines established by the court in Green v. Surf Club, Inc., 136 So.2d 354 (Fla. 3rd DCA 1961), cert. den., 139 So.2d 694 (Fla. 1962); (13) fees for preparing or serving food products; (14) food products when furnished with living or sleeping accommodations at colleges or other institutions of higher learning; (15) the exemption provided for certain complimentary food and drinks provided by public lodging establishments; (16) food products when furnished with housing at labor camps or public housing quarters; (17) food products furnished at day care facilities, day camps, or other custodial camps; (18) the exemption provided to hospital patients and inmates or to residents of homes for the aged; (19) food products sold to or prepared and served by social clubs, civic clubs, or fraternal organizations; (20) food products sold to or by nonprofit organizations, religious institutions, and organizations sponsoring a fundraising event; and (21) the exclusion from tax for items and materials used one time only for packaging or serving food products.

The purpose of the proposed amendments to Rule 12A-1.040, F.A.C. (Sales of Containers, Wrapping and Packing Materials and Related Products), is to remove provisions regarding the packaging of food products that will be provided in Rule 12A-1.011, F.A.C., as substantially reworded, and Rule 12A-1.0115, F.A.C., as created.

The purpose of the proposed amendments to 12A-1.071, F.A.C. (Rentals, Leases, or License to Use Tangible Personal Property), is to: (1) remove provisions regarding sales by caterers that will be provided in Rule 12A-1.0115, F.A.C., as created; and (2) remove provisions regarding water softening services that will be provided in Rule 12A-1.011, F.A.C., as substantially reworded.

The purpose of the proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), is to remove obsolete Form DR-46B (Examples of Nonalcoholic Preparations, Beverages and Drinks when Sold in Grocery Stores and Similar Establishments) which is no longer used by the Department.

**SUBJECT AREA TO BE ADDRESSED:** This rule development workshop is being held to solicit and receive public comment and input regarding the working draft of changes to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), for: (1) the application of tax on the sale of food products generally sold by grocery stores, convenience stores, supermarkets, bakeries, fish markets, produce markets, and other like places of business; (2) the application of tax on bakery products sold by bakeries, pastry shops, and like establishments; (3) the application of tax on the sale of water or ice; and (4) the application of tax on the sale of food products generally served, prepared, or sold in or by restaurants, lunch counters, cafeterias, caterers, hotels, taverns, or other like places of business.

The following issues relevant to grocery stores, supermarkets, convenience stores, and others that sell grocery items will be addressed:

- Sales of grocery items, both taxable and exempt
- Sales of bakery products for consumption on the premises and those sold for consumption off the premises

- Sales of taxable soft drinks and other beverages and tax-exempt 100% juice
- Sales of hot prepared food items sold by grocery stores
- Sales of packages containing both tax-exempt food items and other taxable items
- Tax-exempt items used for packaging food for sale

Issues related to restaurants, lunch counters, cafeterias, hotels, taverns, caterers, transportation companies, tax-exempt organizations, or other places that sell prepared food items will also be addressed:

- Meals, drinks, and food items that are taxable when prepared, served, or sold in such places of business
- The taxability of food and drinks served or sold in places where an admission is charged
- How to tax meals and food items purchased with coupons or other discounts
- When gratuities are subject to tax
- The exemption for food donated to a food bank or to organizations exempt from federal tax
- The exemption from use tax on food or drinks furnished as part of a room package by hotels and other public lodging establishments
- Tax-exempt items used for packaging food or drink for sale

SPECIFIC AUTHORITY: 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4., (7), 212.11(5)(b), 212.12(1)(b)2., 212.17(6), 212.18(2), (3), 213.06(1), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2), (7), FS.

LAW IMPLEMENTED: 92.525(1)(b), (3), 95.091, 125.0104, 125.0108, 201.08(1)(a), 201.01, 201.08(1)(a), 201.133, 201.17(1)-(5), 202.11(2), (3), (6), (16), (24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515,

212.054, 212.055, 212.06, 212.0606, 212.07(1), (2), (8), (9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1)- (5), 212.12(1), (2), (9), (13), 212.13, 212.14(5), 212.17, 212.18(2), (3), 213.235, 213.29, 213.37, 219.07, 288.1258, 376.70, 376.75, 402.61, 403.717, 403.718, 403.7185, 443.036, 443.121(1), (3), 443.131, 443.1315, 443.1316, 443.171(2), (7), 616.260 FS.

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

TIME AND DATE: April 18, 2007, 1:30 p.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 Technical Assistance and Dispute Resolution 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

DEVELOPMENT WORKSHOP IS: Richard Parsons, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4838.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

DEPARTMENT OF REVENUE  
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

AMENDING RULES 12A-1.0011, 12A-1.005, 12A-1.011, 12A-1.040,

12A-1.071, AND 12A-1.097

CREATING RULE 12A-1.0115

12A-1.0011 Schools Offering Grades K through 12; Parent-Teacher Associations; and Parent-Teacher Organizations.

(1) through (2) No change.

(3) SALES OF SCHOOL MATERIALS AND SUPPLIES AND FUND-RAISING ITEMS.

(a) through (b) No change.

(c)1. Schools offering grades K through 12 and parent-teacher associations or parent-teacher organizations whose primary purpose is to raise funds for such schools may pay tax to their suppliers on the cost price of items instead ~~in lieu~~ of registering as a dealer, obtaining a Consumer's Certificate of Exemption, or collecting tax on their sales of the following taxable items:

a. No change.

b. Items sold for fund raising purposes, such as meals or other prepared food products, candy, photographs, greeting cards, wrapping paper, and similar fund raising items.

c. through (5) No change.

Specific Authority 212.17(6), 212.18(3), 213.06(1) FS. Law Implemented 212.04(2)(a),

212.08(7)(o), (r), ~~(ll)~~ (nn), 212.0821 FS. History-New 6-19-01, Amended \_\_\_\_\_.

12A-1.005 Admissions.

(1) through (2) No change.

(3) TAXABLE ADMISSIONS AND PARTICIPATION FEES. The following paragraphs contain examples of admission charges that are subject to tax, unless such admissions are specifically exempt under the provisions of Section 212.04(2), F.S. This list is not intended to be an exhaustive list.

(a) through (h) No change.

(i) Fees charged for entrance to a restaurant, tavern, night club, or similar place of business are subject to tax.

(i) through (m) Renumbered (j) through (n) No change.

(4) through (6) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(1), 212.04, 212.08(6), (7), 616.260 FS. History-Revised 10-7-68, 1-7-70, 6-16-72, Amended 7-19-72, 12-11-74, 9-28-78, 7-3-79, 12-3-81, 7-20-82, Formerly 12A-1.05, Amended 1-2-89, 12-16-91, 10-17-94, 3-20-96, 3-4-01, 10-2-01, 4-17-03, 6-28-05, \_\_\_\_\_.

(Substantial Rewording of Rule 12A-1.011 follows. See Florida Administrative Code for present text.)

12A-1.011 Sales of Food Products and Drink for Human Consumption by Grocery Stores, Convenience Stores, and Supermarkets; Sales of Bakery Products by Bakeries, Pastry Shops, or Like Establishments; Drinking Water; Ice ~~Sales of Food or Drinks Served, Cooked,~~

~~Prepared, or Sold by Restaurants or Other Like Places of Business.~~

(1)(a) Section 212.08(1), F.S., exempts food products for human consumption, with certain exceptions. The purpose of this rule is to clarify the application of tax on the sale of food products generally sold in or by grocery stores, convenience stores, supermarkets, bakeries, fish markets, produce markets, and other like places of business. This rule is also intended to clarify the application of tax on the sale of bakery products by bakeries, pastry shops, or like establishments and on the sale of drinking water or ice.

(b) Rule 12A-1.0115, F.A.C., is intended to clarify the application of tax on food products generally served, prepared, or sold in or by restaurants, lunch counters, cafeterias, caterers, hotels, taverns, or other like places of business.

(2) TAX-EXEMPT FOOD PRODUCTS.

(a) Food products for human consumption, whether processed, cooked, raw, canned, or in any other form which is generally regarded as food, are exempt. The following is a non-exhaustive list of exempt food products:

1. Baby foods and baby formulas;
2. Baked goods and baking mixes, including ready-to-eat and ready-to-bake products;
3. Baking and cooking items advertised and normally sold for use in cooking or baking, such as chocolate morsels, flavored frostings, glazed or candied fruits, marshmallows, powdered sugar, or food items intended for decorating baked goods;
4. Cereals and cereal products, including ready-to-eat, instant, regular hot cereals;
5. Cheeses, including cured and whey cheese, cream, natural, grating, processed, spread, dip, and other miscellaneous cheeses;
6. Cocoa;

7. Coffee and coffee substitutes;
8. Condiments and relishes, including seasoning sauces and spreads, such as mayonnaise, ketchup, or mustard;
9. Cookies, including chocolate-coated or cream-filled;
10. Dairy products;
11. Dairy substitutes;
12. Dietary supplements and meal replacements, including liquid food supplements and nutrition bars, including those that are candy-coated or chocolate-coated;
13. Eggs and egg products, including liquid, frozen, or dried eggs;
14. Fish, shellfish, and other seafood products, whether fresh or frozen;
15. Food coloring;
16. Frozen dinners and other frozen food products;
17. Fruit, fruit snacks, fruit roll-ups, and dried fruit, including those sweetened with sugar or other sweeteners;
18. Gelatins, puddings, and fillings, including flavored gelatin desserts, puddings, custards, parfaits, pie fillings, and gelatin base salads;
19. Grain products and pastas, including macaroni and noodle products, rice and rice dishes;
20. Honey;
21. Ice cream, frozen yogurt, sherbet, and similar frozen dairy or nondairy products sold in units larger than one pint;
22. Jams and jellies;
23. Marshmallows;

24. Meat and meat products;

25. Meat substitutes;

26. Milk, including natural fluid milk, homogenized milk, pasteurized milk, whole milk, chocolate milk, buttermilk, half and half, whipping cream, condensed milk, evaporated milk, powdered milk, or similar milk products, and products intended to be mixed with milk;

27. Natural fruit or vegetable juices or their concentrates or reconstituted natural concentrated fruit juices in any form, whether frozen or unfrozen, aerated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned with salt or spice, or unseasoned.

Only those juices that are permitted by federal law and regulation to be labeled “100 percent juice” or “100 percent juice with added \_\_\_\_\_ [filled in with a term such as “ingredient(s),”

“preservative,” or “sweetener,” as appropriate]” will be considered natural fruit or vegetable

juices. [Title 21 (Food and Drug), Chapter 9 (Federal Food, Drug, and Cosmetic Act),

Subchapter IV (Food) 21 U.S.C. ss. 341; 343 (January 24, 2002)]; [21 C.F.R. Ch. 1, ss. 101.30;

102.5; 102.33, 146.114-146.187; 156.3; 156.145 (4-1-06)].

28. Peanut butter;

29. Poultry and poultry products;

30. Salad dressings and dressing mixes;

31. Salt, pepper, spices, seeds, herbs, seasonings, blends, extracts, and flavorings, whether natural or artificial;

32. Sandwich spreads;

33. Sauces and gravies;

34. Snack foods, including chips, corn chips, potato chips, cheese puffs and curls, cereal bars, cracker jacks, granola bars, nuts and edible seeds, pork rinds, and pretzels, whether such

products are chocolate-coated, honey-coated, or candy-coated.

35. Soups and soup mixes;

36. Sugar, sugar products, and sugar substitutes;

37. Tea (including herbal tea), unless sold in a liquid form;

38. Vegetables and vegetable products;

39. Vegetable oils, lard, olive oil, shortenings, and oleomargarine.

(b) Food products prepared off the seller's premises are exempt when:

1. Sold in the original sealed container;

2. Sliced into smaller portions; or

3. The product is sold frozen and then heated on the seller's premises by the customer.

(c) Taxpayers who have a question regarding the taxable status or exempt status of a food product may submit a written description of the food product and a copy of the food product label to the Department to obtain a determination of the taxability of the product. This request should be addressed to the Florida Department of Revenue, Technical Assistance and Dispute Resolution, P.O. Box 7443, Tallahassee, Florida 32314-7443.

(3) BAKERY PRODUCTS SOLD BY BAKERIES, PASTRY SHOPS, OR LIKE ESTABLISHMENTS.

(a) Bakery products sold by bakeries, pastry shops, or like establishments as hot prepared food products are taxable.

1. Bakery products that are kept warm by a heat source used to maintain them in a heated state, or to reheat them, are hot prepared food products.

2. Bakery products that are sold while still warm from the initial baking are not hot prepared food products.

3. Example: A bakery establishment toasts a bagel for a customer. The sale of the bagel is subject to tax, whether the bakery establishment has eating facilities or does not have eating facilities.

(b) Bakery products, excluding items sold as a hot prepared food products, that are sold by bakeries, pastry shops, or like establishments that do not have eating facilities are exempt.

(c)1. Bakery products, excluding items sold as hot prepared food products, that are sold by bakeries, pastry shops, or like establishments that have eating facilities are subject to tax, unless the bakery product is sold for consumption off the premises.

2. For the purpose of this paragraph, there shall be a rebuttable presumption that bakery products are not intended by the customer to be consumed off the seller's premises when:

a. Such bakery products are sold in quantities of 5 or fewer items; or

b. The bakery products are not packaged in a manner consistent with an intention by the customer to consume the products off the seller's premises, such as products that are bagged or sold in packaging that is glued, stapled, wrapped, or sealed.

(d)1. Bakeries, pastry shops, or like establishments that have eating facilities and make tax-exempt sales of bakery products that are for consumption off the premises are required to separately account for the tax-exempt sales of bakery products for consumption off the premises.

2. Examples of methods to separately account for tax-exempt sales of bakery products for consumption off the premises are: using sales invoices which contain documentation that the sales of the bakery product is for consumption off the premises; using a separate key on a cash register to record tax-exempt sales of bakery products; or using a separate cash register to record tax-exempt sales of bakery products.

3. Example. A bakery operates an establishment with eating facilities. The bakery sells

donuts, toasted bagels, and other pastries, as well as coffee and other drinks. The bakery sells bakery products to patrons who take the products home for consumption in sealed containers. Products sold for consumption on the premises are served to the customers on trays. The bakery uses separate keys on its cash registers to account for the sales of tax-exempt bakery products to patrons who purchase the products for consumption off the premises in sealed containers separately from the accounting for taxable sales of toasted bagels, coffee, other drinks, and bakery products for consumption on the premises. The bakery products sold for consumption off the premises are exempt because the bakery's packaging and accounting methods overcome the rebuttable presumption that the products are sold for consumption on the premises.

(4) TAXABLE FOOD PRODUCTS. The exemption for food products for human consumption does not apply to any of the items specified in this subsection.

(a) Candy, chewing gum, bubble gum, breath mints, and any similar product regarded as candy or confection, based on its normal use as indicated on the label or advertising, is subject to tax. The term "candy and similar products" does not include snack foods not regarded as candy or confection, as indicated on the label or advertising of the product.

(b) Food prepared, whether on or off the seller's premises, and sold for immediate consumption is subject to tax. This does not apply to food prepared off the seller's premises and sold in the original sealed container, or to the slicing of products into smaller portions.

1. Food prepared for immediate consumption is food prepared to a point generally accepted as ready to be eaten without further preparation and that is sold in a manner that suggests readiness for immediate consumption. In determining whether an item of food is sold for immediate consumption, the customary consumption practices prevailing at the selling facility shall be considered.

2. Examples:

a. Potato salad is prepared and delivered to a dealer in bulk. The dealer repackages the potato salad into smaller containers. Because the potato salad is not sold in the original container, the sale of the repackaged smaller containers of potato salad is subject to tax.

b. A grocery store buys cold cuts in 5-pound packages. The grocery store slices cold cuts for the customer according to the thickness and the amount the customer desires. The food is then packaged for sale to the customer. Because the cold cuts are sliced into smaller portions, the sale of the cold cuts is exempt from tax.

c. A grocery store grinds selected peanuts into peanut butter at the customer's request. The sale of the peanut butter is subject to tax.

d. A supermarket offers freshly popped popcorn for shoppers for sale. The sale of the popcorn is subject to tax.

e. A supermarket prepares seafood products, such as smoked fish or steamed shrimp, for sale. The sale of the smoked or steamed shrimp is subject to tax.

(c)1. Hot prepared food products, whether sold separately or in combination with other food items, when the food is heated by the seller rather than by the customer, is subject to tax.

2. Hot prepared food products are those products, items, or components that have been prepared for sale in a heated condition and sold at any temperature that is higher than the air temperature of the room or place where the products are sold. Preparation of a "hot prepared food product" includes cooking, microwaving, warming, toasting, or any other method of heating the food. Food products, including bakery products, are considered "hot prepared food products" when a heat source is used to maintain the food product in a heated state or is used to reheat the food product. Bakery products that are sold while still warm from the initial baking are not "hot

prepared food products.” Their temperature is a result of the timing of the customer’s purchase rather than an indication of preparation to be sold in a heated condition.

3. When a single price is charged for a combination of hot prepared food products and cold food items or other components, the single price charged for the combination is subject to tax.

4. Examples:

a. A supermarket sells barbecued chicken that is kept hot by a rotisserie to be taken home and eaten. The sale of the chicken is subject to tax.

b. A grocery store bakes bread in an oven. The bread is packaged for sale while it is still warm. A customer purchases a package of the bread while it is still warm. The sale of the warm bread is not subject to tax.

c. A single price is charged for a combination of a hot meal, hot pizza, hot specialty dish, or hot sandwich, with cold components, such as a salad or fruit or other side items, by a convenience store. The single price charged for the combination is subject to tax.

(d) Sandwiches sold ready for immediate consumption, whether refrigerated or heated by the customer or by the retailer, are subject to tax. An example of a sandwich not sold ready for immediate consumption would be a frozen sandwich or a sandwich with a frozen or partially frozen filling.

(e) Meals sold for consumption on or off the seller's premises are subject to tax.

(f) Ice cream, frozen yogurt, and similar frozen dairy or nondairy products in cones, small cups, or pints, and popsicles, frozen fruit bars, or other novelty items, whether sold separately or in multiple units, are subject to tax.

(5) TAXABLE SOFT DRINKS. The exemption for food products for human

consumption does not apply to soft drinks. The following sales of soft drinks are subject to tax:

(a) Nonalcoholic beverages, whether carbonated or noncarbonated.

(b) Any noncarbonated beverage made from milk derivatives, such as ice cream sodas, milkshakes, or malts.

(c) Any beverages and preparations commonly referred to as a “soft drink,” such as sodas, soda water, ginger ale, colas, root beer, tonic, fizzes, or cocktail mixes.

(d) Any beverage containing fruit or vegetable juice labeled with the word(s) “ade,” “beverage,” “cocktail,” “drink,” or “fruit or vegetable flavor, flavored, or flavorings.” Federal law and regulations require that any beverage containing more than 0 percent juice, but less than 100 percent fruit or vegetable juice, which represents or suggests by its physical characteristics, name, labeling, ingredient statement, or advertising that it contains fruit or vegetable juice, be labeled in a manner that is appropriate to advise the consumer that the product is less than 100 percent juice. [Title 21 (Food and Drug), Chapter 9 (Federal Food, Drug, and Cosmetic Act), Subchapter IV (Food) 21 U.S.C. ss. 341; 343 (January 24, 2002)]; [21 C.F.R. Ch. 1, ss. 101.30; 102.5; 102.33, 146.114-146.187; 156.3; 156.145 (4-1-06)]. Examples of taxable beverages include: apple blend, cranberry juice cocktail, grape juice beverage, lemonade, limeade, orangeade, raspberry and cranberry flavored drink, fruit drink, fruit punch, diluted fruit juices, and diluted vegetable juices.

(e) Tea sold in a liquid form.

(6) VENDING MACHINES AND MOBILE VENDORS. Food products sold through a vending machine, push cart, motor vehicle, or any other form of vehicle are subject to tax. See Rule 12A-1.044, F.A.C., for sales through vending machines.

(7) WATER AND ICE.

(a)1. Drinking water, including water enhanced by the addition of minerals, sold in bottles, cans, or other containers is exempt, except when carbonation or flavorings has been added to the water.

(b) The sale of ice, including dry ice, is subject to tax, except when the ice is purchased for use as a packaging material to package food products for sale, as provided in subsection (11) of this rule.

(c) Fluoride used in the treatment of drinking water is exempt.

(d) Germicides (such as chlorine), sodium silicate, activated charcoal, and similar purification agents used in the treatment of drinking water are exempt.

(e) The charge for water conditioning services, such as water softening services, is not subject to tax. The sale of salt for use in water softeners to regenerate the minerals required for softening water is not the sale of a purification agent used in the treatment of drinking water and is subject to tax.

#### (8) COMPLIMENTARY AND DONATED FOOD PRODUCTS.

(a)1. Dealers that primarily sell food products at retail are not subject to sales or use tax on any food or drink provided without charge as a sample or for the convenience of customers, even when cooked or prepared on the dealer's premises. For example, hot coffee provided in a grocery store for shoppers is not subject to sales or use tax.

2. Dealers that primarily sell food products at retail are not subject to sales or use tax on any item given to a customer as part of a price guarantee plan related to point-of-sale errors.

3. The exemption, as provided in this paragraph, does not apply to businesses whose primary activity is to serve prepared meals or alcoholic beverages for immediate consumption.

(b) Dealers that sell food products at retail are not subject to sales or use tax on any food

product donated to a food bank or an organization determined to be currently exempt from federal income tax pursuant to s. 501(c) of the Internal Revenue Code of 1986, as amended.

(9) WIC VOUCHERS AND FOOD STAMPS.

(a) Food products are exempt when purchased with food stamps issued by the United States Department of Agriculture, or with Special Supplemental Food Program for Women, Infants, and Children (WIC) vouchers issued under authority of federal law.

(b) When a purchase of food products is made partly with food stamps or WIC vouchers and partly with cash or manufacturer's coupons, the food stamps or WIC vouchers will first be used to defray the cost of the taxable food and drinks, less the value of any manufacturer's coupons, that can be purchased with the food stamps or WIC vouchers. When the food stamps or WIC vouchers are insufficient to purchase the taxable items, tax is due on the remaining sales price of taxable food and drinks.

(10) MULTIPLE ITEMS PACKAGES.

(a) When a package contains both exempt food products and taxable tangible personal property (e.g., a basket of food and candy, a basket of nuts, or decorated cans or glasses filled with food items) and the tax-exempt food products are separately itemized and priced from the taxable tangible personal property, no tax is due on the tax-exempt food products.

(b) When the total charge for a package containing both exempt food products and taxable tangible personal property is a single charge, the application of tax depends upon the essential character of the complete package, as follows:

1. When the taxable tangible personal property represent more than 25 percent of the value of the package, the total charge is subject to tax.

2. When the taxable tangible personal property represent 25 or less of the value of the

package, the total sale is exempt. The seller is required to pay use tax on any taxable items included in the package that were purchased tax-exempt for the purposes of resale. The cost price of any promotional items included in the package is subject to tax.

(11) ITEMS USED TO PACKAGE FOOD PRODUCTS.

(a) The purchase, use, or consumption of items and materials used one time only for packaging food products, without which delivery of the food product would be impractical, or for the convenience of the customer, is not subject to tax.

(b) For example, the following items purchased by grocery stores, convenience stores, supermarkets, bakeries, fish markets, produce markets, and other like places of business and used in the manner described are not subject to tax:

1. Beverage containers when the seller of the beverage does not require a deposit to secure the return of the container;

2. Cardboard 6-pack and 12-pack lift cartons;

3. Egg cartons, egg crates, and other containers used to transport eggs to a customer;

4. Ice, dry ice, and salt that is placed directly into the shipping container for perishable food or placed into the packaging of perishable food sold at retail;

5. Oil used to line the inside of containers in which meat is packaged for shipment;

6. Paper food dividers used to separate food sections in a container;

7. Paper or plastic bags or sacks for use by customers in carrying out purchased items;

8. Skewers used by butchers and meat shops to prepare meat or seafood for sale.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14)(c), 212.07(2), 212.08(1), (4)(a)1., (7)(oo), (pp), ~~212.18(2)~~ FS. History-Revised 10-7-68, 6-16-72, 9-28-78, 10-29-81, Formerly 12A-1.11, Amended 12-8-87, 1-2-89, 8-10-92, 6-19-01, 4-17-

03,\_\_\_\_\_.

12A-1.0115 Sales of Food Products Served, Prepared, or Sold in or by Restaurants, Lunch Counters, Cafeterias, Caterers, Hotels, Taverns, or Other Like Places of Business and by Transportation Companies.

(1) SCOPE.

(a) Section 212.08(1), F.S., exempts food products for human consumption, with certain exceptions. The purpose of this rule is to clarify the application of tax on food products generally served, prepared, or sold in or by restaurants, lunch counters, cafeterias, caterers, hotels, taverns, or other like places of business.

(b) Rule 12A-1.011, F.A.C., is intended to clarify the application of tax to the sale of food products generally sold by grocery stores, convenience stores, supermarkets, bakeries, fish markets, produce markets, and other like places of business, the sale of bakery products by bakeries, pastry shops, and like establishments, and the sale of drinking water or ice.

(2) FOOD PRODUCTS SERVED, PREPARED, OR SOLD IN OR BY RESTAURANTS OR SIMILAR PLACES OF BUSINESS.

(a) Food products served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, or other similar places of business are subject to tax.

(b) Food products that are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware are subject to tax. The food products are subject to tax, even though the tables, chairs, or counters and the trays, glasses, dishes, and other tableware may be provided by a person with whom the dealer contracts to furnish, prepare, or serve the food products to others.

(c) Food products that are ordinarily sold for immediate consumption on the seller's premises or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location are subject to tax. The food products remain subject to tax even when the product is sold on a "take out" or "to go" basis and are packaged or wrapped and taken away from the dealer's facility. The customary practices prevailing at the dealer's facility will be used to determine whether a food product is sold for immediate consumption at the selling facility. The premises of a caterer with respect to catered meals or beverages is the place where such meals or beverages are served.

(d) Restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business that also maintain a separate department that includes groceries are not required to collect tax on tax-exempt sales of food products, as provided in Rule 12A-1.011, F.A.C., when separate records are maintained for the separate department; however, food products that are sold as prepared food through a separate department are subject to tax.

### (3) FOOD PRODUCTS CONSUMED IN PLACES WHERE AN ADMISSION IS CHARGED.

(a) Food products are subject to tax when furnished, served, prepared, or sold on the premises of a place where admission is charged for entrance. The term "premises" will be construed broadly to include: the lobby, aisle, or auditorium of a theater; the seating, aisle, or parking area of an arena, rink, or stadium; the parking area of a drive-in or outdoor theater; or similar places.

(b) When food products are furnished to patrons who have paid an admission charge for entrance as a part of that admission charge and there is no separately itemized charge to the patron for the food products, tax is due on the cost of the food products furnished. When the food

products are purchased from a caterer, restaurant, or similar establishment, tax is due on the total charge made by the caterer, restaurant, or similar establishment.

(c) When the charges for food products are separately itemized and priced from the admission charge to the patron, tax is required to be collected on the sales price of the food products. (See Rule 12A-1.005, F.A.C., for admission charges.) Food products that are separately itemized and sold to the patron may be purchased for resale, as provided in Rule 12A-1.039, F.A.C.

(4) VENDING MACHINES AND MOBILE VENDORS. Food products sold through a vending machine, push cart, motor vehicle, or any other form of vehicle are subject to tax. See Rule 12A-1.044, F.A.C., for sales through vending machines.

(5) COUPONS, DISCOUNTS, AND DONATED FOOD PRODUCTS.

(a) When a dealer sells two meals for the price of one meal, the dealer is required to collect tax on the total amount charged. No use tax is due on the second meal.

(b) The sale of a meal ticket or coupon book to be redeemed for the purchase of food products is not subject to tax at the time of sale. When the ticket or coupon is redeemed by a customer when purchasing food products, the seller of the food products is required to collect the tax on the total consideration received, including the value of the ticket or coupon redeemed, and any additional compensation received by the seller for furnishing the food product to the customer.

(c) When the seller provides customers a food product without charge after purchasing a designated number of food products, tax is due on the sales price of the food products sold. No tax is due on the item provided to the customer without charge. For example, a sandwich shop offers customers a coupon that will entitle the customer to receive a free sandwich after

purchasing five sandwiches. When the customer's coupon indicates that the customer has purchased five sandwiches, the customer redeems the coupon for the free sandwich. The sandwich shop is required to collect tax on the sale of the first five sandwiches. No tax is due on the sandwich provided, without charge, to the customer, who has purchased the required five sandwiches.

(d) A dealer whose primary business activity is serving food products or alcoholic beverages for immediate consumption is required to pay tax on the cost price of food products provided to customers without charge. Examples of items served without charge to customers are coffee, popcorn, nuts, chips, and pretzels.

(e) Dealers that sell food products at retail are not subject to use tax on any food product donated to a food bank or an organization determined to be currently exempt from federal income tax pursuant to s. 501(c) of the Internal Revenue Code of 1986, as amended.

(6) FOOD PRODUCTS SOLD OR FURNISHED BY EMPLOYERS.

(a) Food products furnished free of charge to an employee, or to the owner of an establishment that provides eating facilities or the owner's family, are subject to tax only when the value of the food product is required to be reported as income to the recipient under the federal income tax law.

(b) Food products sold by restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business to employees are subject to tax when the employee pays for the meal or when the charge for the meal is deducted from the employee's wages.

(7) TRANSPORTATION COMPANIES.

(a) Food products sold ready for immediate consumption by airlines, railroads (except Amtrak), vessels, or other transportation companies to their passengers, while within Florida, are

subject to tax. A transportation company may extend a copy of its Annual Resale Certificate to the selling dealer instead of paying tax on the purchase of food products for purposes of resale to their passengers.

(b)1. Transportation companies, except Amtrak, are required to pay tax on their purchases of meals and food products ready for immediate consumption when:

a. The food products are delivered to the transportation company in this state, whether consumed in this state or outside this state;

b. The food products are furnished to the passengers; and

c. There is no separately itemized charge to the passenger for the food product.

2. For the partial exemption available to airlines, see Section 212.0598, F.S. For the partial exemption available to vessels engaged in interstate or foreign commerce under Section 212.08(8), F.S., see Rule 12A-1.0641, F.A.C.

(c) The purchase or sale of food products ready for immediate consumption by Amtrak, an instrumentality of the United States government, is not subject to tax.

(8) SALES OF FOOD PRODUCTS BY CATERERS.

(a) For purposes of this rule, the term “caterer” means any person engaged in the business of furnishing food products on the premises of the customer, or on premises supplied by the customer, including premises leased by the customer from a person other than the caterer. The term does not include employees hired directly by the customer by the hour or day to serve food products provided by the customer.

(b) The total charge made by caterers for furnishing food products is subject to tax. Any separately itemized charge for the use of dishes, silverware, glasses, chairs, tables, tablecloths, and similar items, or for the labor of furnishing the food products, whether performed by the

caterer, the caterer's employees, or persons contracting with the caterer, is subject to tax.

(c) Tax applies to charges by a caterer, or any other person, for planning, designing, coordinating, or supervising an event when the charges to the customer are made in connection with the furnishing of food products at the event. Tax does not apply to charges for services unrelated to the furnishing and serving of meals and beverages, such as entertainment charges, when the charges are separately itemized and separately priced to the customer on the customer's bill, invoice, statement, or other evidence of sale.

(d) Caterers may rent, lease, or purchase tangible personal property for purposes of resale tax-exempt by extending a copy of their Annual Resale Certificate to the selling dealer instead of paying tax when:

1. The property is rented, leased, or purchased exclusively for resale or re-rental to the caterer's customers;

2. The charge to the customer is separately itemized on the customer's bill, invoice, statement, or other evidence of sale; and

3. The applicable tax is collected from the customer on the separately itemized charge for the rental, lease, or sale of the property.

(e) When a caterer sells food products, including any charges for serving the food products, to other caterers or event planners for the purpose of resale, the caterer may accept a copy of the purchaser's Annual Resale Certificate instead of collecting tax from the purchaser. The purchasing caterer or event planner is required to collect the applicable tax from his or her customer on the sale of the food products

(f) Organizations that hold a valid Consumer's Certificate of Exemption may extend a copy of their certificate to the caterer or event planner to purchase food products used in the

normal nonprofit activities of the organization tax-exempt. See subsection (15).

(9) GRATUITIES AND OTHER FEES FOR PREPARING OR SERVING FOOD PRODUCTS.

(a) Any charge made by a dealer to a customer for gratuities, tips, or similar charges is a part of the taxable sales price of the food or drinks except when:

1. The charge is separately stated as a gratuity, tip, or other charge on the customer's receipt or other tangible evidence of sale; and,

2. The dealer does not receive, either directly or indirectly, any monetary benefit from such gratuity, tip, or other similar charge. Any fee imposed by a credit card company upon the dealer is not construed as the retention of such monies by the dealer. Any portion of the gratuity, tip, or other similar charge withheld by the dealer for purposes of payment of the employee's share of social security, withheld as federal income tax, or withheld pursuant to judicial or administrative orders is not construed as retention of such monies by the dealer.

(b) The charge for room service made by hotels for serving meals in guests' rooms is included in the total price of the meal and is subject to tax.

(c) Service charges, minimum charges, corkage fees, setup fees, or similar charges imposed by a restaurant, tavern, nightclub, or other like places of business as part of the charge for furnishing, serving, or preparing food products are subject to tax.

(d) The charge for the preparation of food products furnished by the customer to the person who prepares the food product for immediate consumption on the premises of the preparer, or who packages or wraps the food products to be taken away from the preparer's premises, is subject to tax.

(10) FOOD PRODUCTS FURNISHED WITH LIVING OR SLEEPING

## ACCOMMODATIONS.

(a) Food products served or sold at community colleges, junior colleges, and other institutions of higher learning, or fraternities and sororities, are subject to tax. If a lump sum amount is charged by the institution for living or sleeping accommodations and meals, a portion of the lump sum amount must be allocated to the sale of food products to reasonably reflect the value of the food products. Tax is due on the portion that is reasonably allocated to the sale of the food products.

(b)1. Public lodging establishments that advertise that they provide complimentary food and drinks are not required to pay sales or use tax on food or drinks when:

a. The food or drinks are furnished as part of a packaged room rate;

b. No separate charge or specific amount is stated to the guest for such food or drinks;

c. The public lodging establishment is licensed with the Division of Hotels and Restaurants of the Department of Business and Professional Regulation; and

d. The public lodging establishment rents or leases transient accommodations that are subject to sales and use tax.

2. The public lodging establishment may extend a copy of its Annual Resale Certificate to the selling dealer to purchase food and drinks used for this purpose tax-exempt, as provided in Rule 12A-1.039, F.A.C.

## (11) DAY NURSERIES AND CUSTODIAL CAMPS.

(a) Day care facilities, nurseries, kindergartens, day camps, and custodial camps that primarily provide professional and personal supervisory and instructions services are not required to collect tax on their charges to the students or campers for providing food products as part of their services. However, when the charges for the furnishing of meals and beverages are

separately itemized and separately priced to the student or camper, tax is required to be collected on the sales price of the meals and beverages.

(12) MEALS SERVED AT LABOR CAMPS.

(a) Labor camps and commercially operated public housing quarters are operated to house and feed workers on a contract basis. The provisions of this subsection are intended to provide the taxability of the housing and meals provided to workers under such contracts.

(b) When the contract provides for meals, and no housing is furnished under the contract, the charge for the meals is subject to tax.

(c)1. When the contract provides for housing and meals for the workers, the charge for meals is subject to tax.

2. When the contract provides for housing for the workers but the workers buy groceries and prepare their own meals, no tax is due on the prepared meals.

(e) Workers residing in public housing quarters or labor camps may enter into agreements under which one worker is appointed to purchase groceries and prepare all food products. The worker may be selected and directed by the group of workers or may be designated and directed by the employer. The employer may deduct from each employee's wages the pro rata share of the groceries purchased for the group or a contracted charge for the meals prepared and served by the employer's designated cook.

1. When the employees select the designated worker to purchase groceries and prepare meals, no tax is due on the amount deducted by the employer for each employee's pro rata share of the cost of the groceries purchased by the designated worker.

2. When the employer selects the worker to be the designated cook who prepares all meals, tax is due on the amount deducted from the employee's wages by the employer for the

meals.

(13) MEALS FURNISHED BY HOSPITALS AND HOMES FOR THE AGED.

(a) Meals furnished to residents of homes for the aged, as defined in Section 212.08(7)(i),

F.S., are exempt.

(b) Meals furnished to patients and inmates of any hospital or other institution designed and operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated or for any reason dependent upon special care or attention are exempt.

(c) Meals sold and delivered as a charitable function by a nonprofit volunteer organization to handicapped, elderly, or indigent persons at their residences are exempt.

(14) FOOD PRODUCTS SOLD TO OR BY SOCIAL CLUBS.

(a) Food products sold to members of a social club, civic club, or fraternal organization that does not hold a valid Consumer's Certificate of Exemption are subject to tax. Examples of social clubs, civic clubs, or fraternal organizations are athletic clubs, country clubs, and community clubs (e.g., YMCA, YWCA, YMHA, and YWHA).

(b) Food products sold by any social club, civic club, or fraternal organization, including organizations that hold a Consumer's Certificate of Exemption, are subject to tax.

(c) Social clubs, civic clubs, and fraternal organizations that furnish food products to their members or guests without charge, such as food products served at meetings, luncheons, or dinners, are required to pay tax on the total cost of the food products furnished or served by a caterer, restaurant, or similar establishment. When club members purchase groceries and prepare the food products to serve to members and guests without charge, no tax is due on the preparation of the food products. For example, an athletic club that does not hold a valid Consumer's Certificate of Exemption purchases meals from a local restaurant to serve to

athletes, without charge, at an event held by the club to honor the athletes. The athletic club is required to pay tax on the total amount charged by the restaurant. If the members of the club buy groceries and prepare the meals themselves, the club is not required to pay tax on the cost of preparing the meals.

(d) When the charges for the furnishing of meals and beverages are separate and apart from the payment of membership dues, the meals and beverages are considered to be sold and the charges are subject to tax. If a club or fraternal organization indicates on its dues invoices, membership billing statements, dues notices, or membership applications that a specified portion of the dues payment is attributed to the furnishing of food products, the specified portion attributed to the furnishing of food products is subject to tax.

(15) FOOD PRODUCTS PREPARED, SERVED, OR SOLD BY NONPROFIT ORGANIZATIONS.

(a) Food products sold at fundraisers and similar types of events are subject to tax, unless such sales qualify as occasional sales, as provided in Rule 12A-1.037, F.A.C. For the taxability of food products sold as fundraisers by schools offering grades K through 12, or by parent-teacher associations or parent-teacher organizations, see Rule 12A-1.0011, F.A.C.

(b) Food products are exempt when sold by a religious institution that has an established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on and that holds a valid Consumer's Certificate of Exemption.

(c) When food products are furnished to patrons by a sponsoring organization as part of a fundraising event and the contribution paid by the patron to the organization bears no relationship to the cost of the food products served at the event, the sponsoring organization is required to pay the applicable tax due on the amount charged by the restaurant or caterer to the

sponsoring organization. Any sponsoring organization that holds a valid Consumer's Certificate of Exemption may extend a copy of its certificate to the restaurant or caterer to purchase food products tax-exempt when the food products are used in the normal nonprofit activities of the organization.

(16) ITEMS USED TO SERVE FOOD PRODUCTS.

(a) The purchase, use, or consumption of items and materials used one time only for packaging or serving food products, without which delivery of the food product would be impracticable, or for the convenience of the customer, is not subject to tax.

(b)1. The following are examples of items purchased by restaurants, lunch counters, cafeterias, caterers, hotels, taverns, and other like places of business, or by establishments that provide eating facilities and make sales of food products that, used in the manner described above, are not subject to tax: butter chips; paper, plastic-coated or styrofoam plates, trays, or cups; paper napkins; paper tops for individual creamers; paper covers for fruit juice glasses; paper covers for trays; plastic stir sticks served with drinks; soufflé cups used one time only; hamburger and frankfurter holders; steak markers used to indicate the extent to which meat is cooked and served to the guest; foil served with food products, such as baked potatoes; straws; toothpicks and toothpick frills used to serve food products, such as sandwiches; and wooden or plastic knives, forks, and spoons.

2. The following are examples of items purchased by such establishments that are subject to tax, as they are not intended to accompany a food product sold to a customer for which the delivery of the product would be impracticable because of the character of the food product: foil that does not accompany the food product to the customer; burger or chicken baskets; chop holders; cloth napkins or tablecloths; doilies; guest checks; leftover bags, trays, and other

containers; menus; paper mats or placemats; toilet tissue; and towels.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(14)(c),

212.07(2), 212.08(1), (4)(a)1., (7)(i), (k), (m), (oo) FS. History-New \_\_\_\_\_.

12A-1.040 Sales of Containers, Wrapping and Packing Materials and Related Products.

(1) through (2) No change.

~~(3) Paper and plastic coated plates, paper napkins, paper cups, butter chips, paper tops for individual creamers, paper covers for fruit juice glasses, soufflé cups, hamburger and frankfurter holders, straws, wooden and plastic spoons and forks are exempt when sold to a purchaser for use in connection with the operation of a restaurant, drugstore, cafeteria or similar business licensed by the Division of Hotels and Restaurants of the Department of Business Regulation. Purchases by these establishments of the following items are taxable: Toothpicks, doilies, placemats, chicken baskets, burgerbaskets, guest checks, menus, paper mats, towels, toilet tissue, toothpick frills, chop holders, aluminum foil for baking and serving potatoes and leftover bags furnished by restaurants.~~

(4) through (7) renumbered (3) through (6) No change.

~~(8) Egg crates, egg cartons and other containers used for the purpose of shipping and transporting eggs to the consumer for final purchase are exempt. This rule applies to used as well as new containers.~~

~~(9) Skewers used by butchers and meat shops are exempt.~~

(10) through (13) renumbered (7) through (10) No change.

~~(14) Steak markers used to indicate the extent to which meat is cooked, such as rare, medium, etc., are removed as the meat is served. They do not become a part of the meal and are~~

~~taxable under this rule.~~

~~(15) Plastic stir sticks sold to bars for one time use only and included in the price of the drink are exempt.~~

(16) through (18) renumbered (11) through (13) No change.

~~(19) Oil used to line the insides of containers in which meat is packed for sale and delivery is exempt.~~

~~(20) It has been determined that cardboard 6 pack and 12 pack lift cartons used generally by beverage bottlers and breweries are containers intended for one time use and are exempt. Cartons, boxes and containers designed and used more than one time for packaging personal property for shipment for sale are taxable, including cardboard 6 pack and 12 pack lift cartons when a deposit on the carton is required.~~

~~(14)~~(21) No change.

~~(22) Ice and salt are exempt when purchased by the seller of perishable food commodities and placed directly in the shipping container or package for shipment in either interstate or intrastate commerce.~~

Cross Reference - Rule 12A-1.029.

Specific Authority 212.17(6), 212.18(2) FS. Law Implemented 212.02(3)(b) ~~(12)(14)(e)~~ FS.

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

12A-1.071 Rentals, Leases, or License to Use Tangible Personal Property.

(1) through (32) No change.

~~(33) Caterers are required to pay tax on the purchases or rentals of all dishes, tables, chairs, silver, linens, kitchen utensils, artificial palms, and other items used by them in the~~

~~conduct of their business. The caterer should pay tax to his supplier and should not furnish the supplier with a resale certificate, except in those instances where he is purchasing or renting such items exclusively for rental and for which he makes a separate charge to his customer.~~

(34) through (36) renumbered (33) through (35) No change.

~~(37) The charge for water conditioning (soft water service) is exempt. The dealer shall pay tax on the acquisition of tanks, minerals, and other equipment used in furnishing such service, unless such materials and supplies are actually sold to the customer.~~

(38) through (47) renumbered (36) through (45) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(1), (4), (10)(g), (12), (14)(a), (15)(a), (16), (19), 212.04, 212.05(1)(c), (d), (f), (h), (i), 212.06(1)(a), (2)(e), (8), 212.08(7)(e), (f), (v), (y), 212.11(2), (3), 212.12(9), 212.18(2), 402.61 FS. History-Revised 10-7-68, 1-7-70, 6-16-72, Amended 12-11-74, 12-31-81, 7-20-82, Formerly 12A-1.71, Amended 1-2-89, 10-5-92, 11-16-93, 8-15-94, 10-17-94, 3-20-96, 8-1-02, 6-12-03, 9-28-04,\_\_\_\_\_.

12A-1.097 Public Use Forms.

(1) No change.

Form Number	Title	Effective Date
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(2) through (14) No Change.

(15)(a) <del>DR-46B</del>	<del>Sales Tax Status of Some Nonalcoholic Preparations, Beverages and Drinks When Sold In Grocery Stores and Similar Establishments</del>	08/92
	(r. 10/89)	

~~(b)~~ No change.

(16) through (23) No change.

Specific Authority 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b),  
212.08(5)(b)4., (7), 212.11(5)(b), 212.12(1)(b)2., 212.17(6), 212.18(2), (3), 213.06(1),  
376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2), (7) F.S. Law  
Implemented 92.525(1)(b), (3), 95.091, 125.0104, 125.0108, 201.08(1)(a), 201.01, 201.08(1)(a),  
201.133, 201.17(1)-(5), 202.11(2), (3), (6), (16), (24), 202.17, 202.22(3)-(6), 202.28(1), 203.01,  
212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055,  
212.06, 212.0606, 212.07(1), (8), (9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1),  
(4), (5), 212.12(1), (2), (9), (13), 212.13, 212.14(5), 212.17, 212.18(2), (3), 213.235, 213.29,  
213.37, 219.07, 288.1258, 376.70, 376.75, 403.717, 403.718, 403.7185, 443.036, 443.121(1),  
(3), 443.131, 443.1315, 443.1316, 443.171(2), (7) FS. History-New 4-12-84, Formerly 12A-  
1.97, Amended 8-10-92, 11-30-97, 7-1-99, 4-2-00, 6-28-00, 6-19-01, 10-2-01, 10-21-01, 8-1-02,  
4-17-03, 5-4-03, 06-12-03, 10-1-03, 9-28-04, 6-28-05, 5-1-06,\_\_\_\_\_.