

AGENDA

FLORIDA DEPARTMENT OF REVENUE

RULE DEVELOPMENT WORKSHOP

10:00 A.M., APRIL 4, 2011

BUILDING ONE, RM 2503, 2450 SHUMARD OAK BLVD
TALLAHASSEE, FLORIDA

THIS MEETING IS OPEN TO THE PUBLIC

1. Call to Order:

- (a) Introduction of Department of Revenue Staff
- (b) Opening Remarks by Department of Revenue

2. Business: Presentation and discussion of the proposed changes to the following rule section of the Florida Administrative Code:

Sales and Use Tax:

Rule 12A-1.018, F.A.C. – Trade and Cash Discounts
Rule 12A-1.074, F.A.C. – Trade-Ins

Corporate Income Tax:

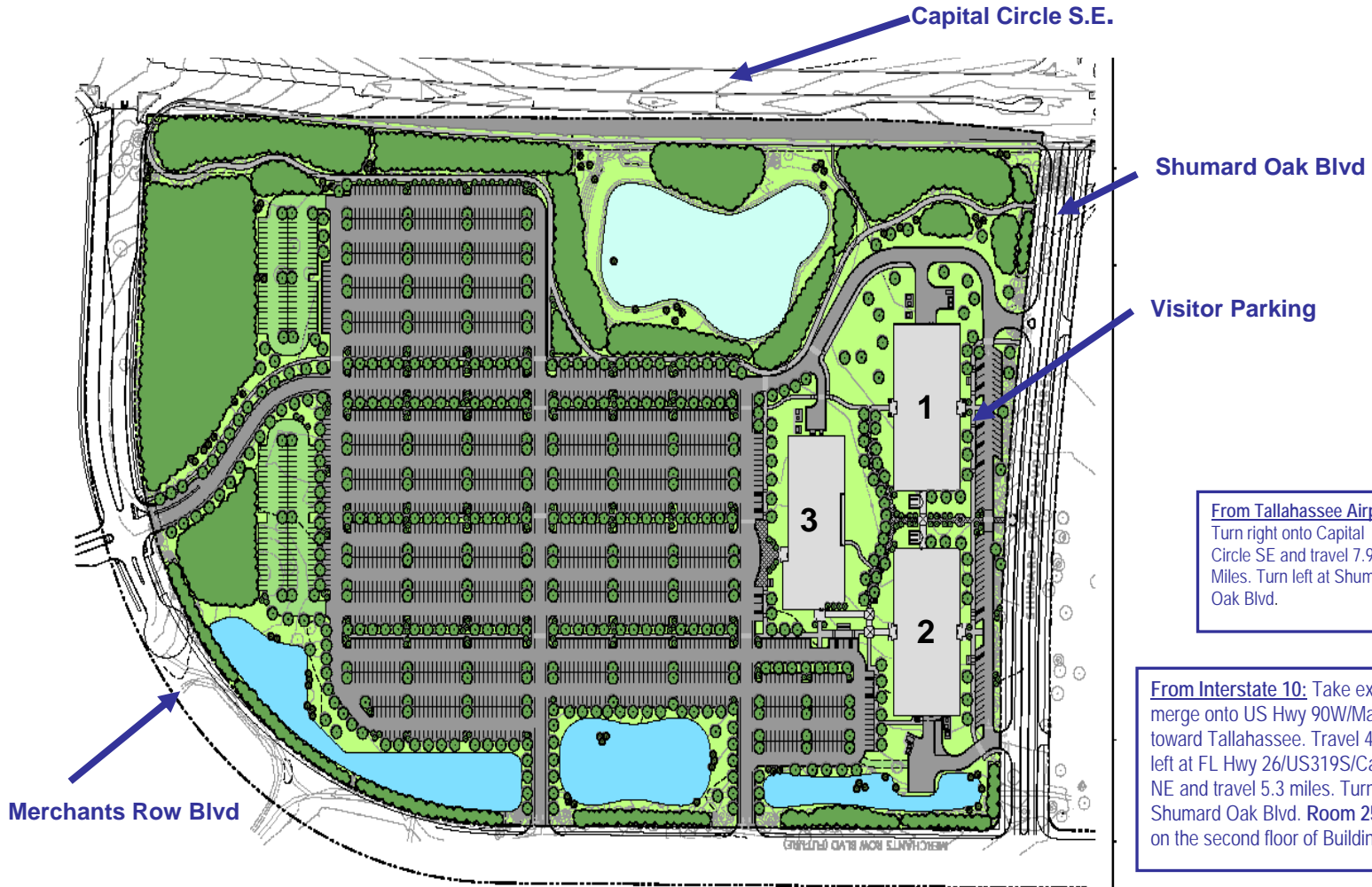
Rule 12C-1.013, F.A.C. – Adjusted Federal Income Defined

Motor Fuel Tax:

Rule 12B-5.130, F.A.C. – Refunds
Rule 12B-5.150, F.A.C. – Public Use Forms

3. Closing comments.

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From Tallahassee Airport:
Turn right onto Capital Circle SE and travel 7.9 Miles. Turn left at Shumard Oak Blvd.

From Interstate 10: Take exit 209 and merge onto US Hwy 90W/Mahan Drive toward Tallahassee. Travel 4.7 mi and turn left at FL Hwy 26/US319S/Capital Circle NE and travel 5.3 miles. Turn right onto Shumard Oak Blvd. Room 2503 is located on the second floor of Building ONE.

0' 100' 200' 100'
ONE INCH EQUALS ONE HUNDRED FEET
CREATED: 01/23/2008
UPDATED: 01/23/2008
NORTH

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE NO: RULE TITLE:

12A-1.018 Trade and Cash Discounts

12A-1.074 Trade-Ins

PURPOSE AND EFFECT: Rule 12A-1.074, F.A.C. (Trade-Ins), provides that for a trade-in credit to be allowed against the sales price of an item, any used article to be taken in trade must be taken “at the time of sale.” In Department of Revenue v. Gamestop, Inc. (Case No. 1D10-2899, November 18, 2010), the appellate court affirmed that the phrase “at the time of sale” effectively negates section 212.09, F.S., and is an invalid exercise of delegated legislative authority. The purpose of the proposed amendments to this rule is to remove the phrase “at the time of sale.”

The subject of the provisions of Rule 12A-1.018, F.A.C. (Trade and Cash Discounts), is discounts, not trade-ins. Consistent with the court’s ruling in Department of Revenue v. Gamestop, Inc., the purpose of the proposed amendments to this rule is to remove the unnecessary reference to the term “trade-ins.”

SUBJECT AREA TO BE ADDRESSED: The subject of the rule development workshop is the proposed removal of the provision of the rule which requires that for a trade-in credit to be allowed against the sales price of an item, the item taken in trade must be taken “at the time of sale.”

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

LAW IMPLEMENTED: 212.02(15), (16), 212.07(2), (3), 212.09, 212.12(9) FS.

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

DATE AND TIME: April 4, 2011, 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 2503, 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 Tammy Miller at (850) 617-8346. 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 IS: French Brown, Deputy Director, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-6309.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS: Published on the Department's Internet site at myflorida.com/dor/rules.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULES 12A-1.018 AND 12A-1.074

12A-1.018 Trade and Cash Discounts.

(1) No change.

(2) Discounts ~~Trade-ins or discounts~~ allowed and taken at the time of sale are deducted from the selling price, and the tax is due on the net amount paid at the time of sale. Discounts granted for payment within a specified period or upon a specified later date are not deemed discounts at the time of sale, and may not be deducted from the selling price for purposes of computing the tax.

(3) through (4) No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(16), 212.07(2), 212.12(9) FS. History—Revised 10-7-68, 6-16-72, Amended 6-3-80, Formerly 12A-1.18, Amended 6-19-01,_____.

12A-1.074 Trade-Ins.

(1) Where used articles of tangible personal property, accepted and intended for resale, are taken in trade, or a series of trades, ~~at the time of sale,~~ as a credit or part payment on the sale of new articles of tangible personal property, the tax levied by Chapter 212, F.S., shall be paid on the sales price of the new article of tangible personal property, less credit for the used article of

tangible personal property taken in trade. A separate or independent sale of tangible personal property is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of new articles of tangible personal property.

(2) Where used articles of tangible personal property, accepted and intended for resale, are taken in trade, or a series of trades, ~~at the time of sale,~~ as a credit or part payment on the sale of used articles, the tax levied by Chapter 212, F.S., shall be paid on the sales price of the used article of tangible personal property, less credit for the used articles of tangible personal property taken in trade. A separate or independent sale of tangible personal property is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of new articles of tangible personal property.

(3) No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(15), (16), 212.07(2), (3), 212.09 FS. History—Revised 10-7-68, 6-16-72, Amended 12-11-74, Formerly 12A-1.74, Amended 1-2-89,_____.

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF REVENUE

CORPORATE INCOME TAX

RULE NO: RULE TITLE:

12C-1.013 Adjusted Federal Income Defined

PURPOSE AND EFFECT: Rule 12C-1.013(5), F.A.C. (Adjusted Federal Income Defined), reflects the provisions of Section 220.13(1)(a)1., F.S., which requires an addition to federal taxable income equal to the amount of any tax upon or measured by income for Florida corporate income tax purposes. This rule subsection also provides that value-added taxes are not required to be added back to federal income for purposes of computing the Florida corporate income tax. The Michigan single business tax is included as an example of a value-added tax. On January 1, 2008, Michigan replaced its single business tax with a business tax based on income. The purpose of this rulemaking is to remove provisions regarding the now obsolete Michigan single business tax.

SUBJECT AREA TO BE ADDRESSED: The removal of the obsolete Michigan single business tax that was included as an example of a value-added tax that is not considered a tax upon or measured by income for purposes of Section 220.13(1)(a)1., F.S.

RULEMAKING AUTHORITY: 213.06(1), 220.51 FS.

LAW IMPLEMENTED: 220.13 FS.

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

DATE AND TIME: April 4, 2011, 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 2503, Tallahassee, Florida

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THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE

DEVELOPMENT IS: Debra Gifford, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-6752.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS: Published on the Department's Internet site at myflorida.com/dor/rules.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE
CORPORATE INCOME TAX
AMENDING RULE 12C-1.013

12C-1.013 Adjusted Federal Income Defined.

(1) through (4) No change.

(5)(a) An addition is required by Section 220.13(1)(a)1., F.S., to federal taxable income equal to the amount of any tax upon or measured by income, paid or accrued as a liability to any state of the United States or to the District of Columbia, which is deductible from gross income in the computation of taxable income for the taxable year. There is no addition required for tax paid to a political subdivision of a state (for example, a city or county) or to the Commonwealth of Puerto Rico, or any territory or possession of the United States, or any foreign country.

(b) The intent of the Legislature when this provision was enacted was to prevent an erosion of the Florida tax base by the amount of the federal tax benefit obtained by paying state income taxes. Therefore, the taxpayer will only be required to add back the amount actually deducted, not an amount that could have been deducted. For example, a taxpayer pays corporate income taxes in 20 states. In computing the deduction allowable for federal purposes, the taxpayer forgets the income tax paid to Georgia. In computing the Florida corporate income tax, the taxpayer only adds back the tax deducted for the 19 states. There is no addback for the Georgia income tax that was not deducted for federal purposes, but was deductible under the

Internal Revenue Code. If this error is later discovered, the Department will not require an addback of the amount of the Georgia tax.

(c) For purposes of this subsection, value added taxes, ~~such as the Michigan single business tax,~~ will not be construed to be a tax upon or measured by income.

(6) through (21) No change.

Rulemaking Authority 213.06(1), 220.51 FS., s. 4, Ch. 2009-18, s. 3, Ch. 2009-192, L.O.F. Law Implemented 220.02(3), 220.03(5), 220.13, 220.131(1), 220.43(1), (3) FS. History—New 10-20-72, Amended 1-19-73, 10-20-73, 10-8-74, 4-21-75, 5-10-78, 11-13-78, 12-18-83, Formerly 12C-1.13, Amended 12-21-88, 12-7-92, 5-17-94, 10-19-94, 3-18-96, 10-2-01, 4-14-09, 6-28-10, _____.

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF REVENUE

MOTOR FUELS, DIESEL FUELS, ALTERNATIVE FUELS, AVIATION FUELS, AND
POLLUTANTS

RULE NO: RULE TITLE:

12B-5.130 Refunds

12B-5.150 Public Use Forms

PURPOSE AND EFFECT: Section 206.8745(6), F.S., grants a refund, as provided by rule, for undyed tax-paid diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping when the power take-off unit or engine exhaust is mounted on a motor vehicle that has no separate fuel tank. The purpose of this rulemaking is to provide the proposed standards for granting refunds of the tax paid on undyed diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping using a hydraulic, pneumatic, or any other kind of pump. When in effective, proposed subparagraph (2)(a)2. of Rule 12B-5.130, F.A.C., and the proposed revisions to Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, will provide: (1) the types of vehicles that qualify for the refund; (2) the information that will be required for each qualified vehicle; (3) the qualified vehicle's percentage of fuel consumed for purposes of unloading bulk cargo by pumping; (4) how to determine the gallons of undyed diesel fuel that are eligible for refund; and (5) how to determine the amount of sales tax due on the eligible fuel.

SUBJECT AREA TO BE ADDRESSED: The subject area of the workshop is the proposed provisions of subparagraph (2)(a)2. of Rule 12B-5.130, F.A.C., and the proposed revisions to

Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, to provide for a refund of tax paid on undyed diesel fuel consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping.

RULEMAKING AUTHORITY: 206.14(1), 206.485(1), 206.59(1), 206.8745(6), 213.06(1), 213.755(8), 526.206 FS.

LAW IMPLEMENTED: 119.071(5), 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.095, 206.11, 206.404, 206.41(4), (5), 206.43(5), (6), 206.44, 206.485, 206.64, 206.86, 206.874, 206.8745, 206.877, 206.90, 206.91, 206.92, 206.97, 206.9835, 206.9865, 206.9931, 206.9942, 206.9943, 212.0501, 213.255, 213.755, 526.203 FS.

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THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE

DEVELOPMENT IS: Ronald Gay, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-6745.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS: Published on
the Department's Internet Site at myflorida.com/dor./rules.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-5, FLORIDA ADMINISTRATIVE CODE
MOTOR FUELS, DIESEL FUELS, ALTERNATIVE FUELS,
AVIATION FUELS AND POLLUTANTS
AMENDING RULES 12B-5.130 AND 12B-5.150

PART I

TAX ON MOTOR AND DIESEL FUEL

12B-5.130 Refunds.

(1) No change.

(2) UNDYED DIESEL FUEL USED FOR OFF-ROAD PURPOSES OR OTHER EXEMPT PURPOSES.

(a) When undyed diesel fuel is consumed by a power take-off unit or engine exhaust for the purpose of turning a concrete mixer drum, for compacting solid waste, or for unloading bulk cargo by pumping, and such power take-off unit or engine exhaust is mounted on a motor vehicle that has no separate fuel tank, tax paid on the diesel fuel will be subject to a refund.

1. A refund of tax paid on undyed diesel fuel will be granted on thirty-five percent of the gallons consumed by vehicles that use fuel to turn a concrete mixer drum or for compacting solid waste. Sales tax imposed under Section 212.0501, F.S., plus any applicable discretionary sales surtax, is due on the average cost per gallon that is eligible for a refund of fuel tax paid. The Department will reduce the amount of refund due on fuel tax paid by the amount of sales tax, plus any applicable discretionary sales surtax, due. The net amount of the refund will be granted

to the qualified applicant.

2. A refund of tax paid on undyed diesel fuel will be granted based on a percentage of the total gallons consumed by vehicles that use undyed diesel fuel for unloading bulk cargo by pumping. Sales tax imposed under Section 212.0501, F.S., plus any applicable discretionary sales surtax, is due on the average cost per gallon, as computed in schedule 1B, Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, that is eligible for a refund of fuel tax paid. The Department will reduce the amount of refund due on the fuel tax paid by the amount of sales tax, plus any applicable discretionary sales surtax, due. The net amount of the refund will be granted to the qualified applicant.

(b) through (c) No change.

(d)1. Persons seeking a refund of tax paid on undyed diesel for off-road or other exempt purposes must file an ~~Form DR-309639~~, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes (Form DR-309639, incorporated by reference in Rule 12B-5.150, F.A.C.) with the Department.

2. No change.

(e) No change.

(3) through (5) No change.

Rulemaking Authority 206.14(1), 206.59(1), 213.06(1) FS. Law Implemented 206.41(4), (5), 206.43(5), (6), 206.64, 206.8745, 206.97 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 1-27-09, 6-1-09, _____.

Cross Reference – Rules 12A-1.059 and 12A-1.0641, F.A.C.

12B-5.150 Public Use Forms.

(1)(a) The following public use forms and instructions are utilized by the Department and are hereby incorporated by reference in this rule.

(b) No change.

Form Number	Title	Effective Date
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(2) through (36) No change.

(37) DR-309639	Application for Refund of Tax Paid on Undyed Diesel Used for Off-Road or Other Exempt Purposes (with instructions)	
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(R. ___ ~~01/11~~)

___ ~~01/11~~

(38) through (41) No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 213.06(1), 213.755(8), 526.206 FS.

Law Implemented 119.071(5), 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028,

206.05, 206.055, 206.095, 206.11, 206.404, 206.41, 206.43, 206.44, 206.485, 206.86, 206.874,

206.8745, 206.877, 206.90, 206.91, 206.92, 206.9835, 206.9865, 206.9931, 206.9942, 206.9943,

212.0501, 213.255, 213.755, 526.203 FS. History—New 11-21-96, Amended 10-27-98, 5-1-06, 4-

16-07, 1-1-08, 1-27-09, 4-14-09, 6-1-09, 6-1-09(5), 1-11-10, 7-28-10, 1-12-11,_____.