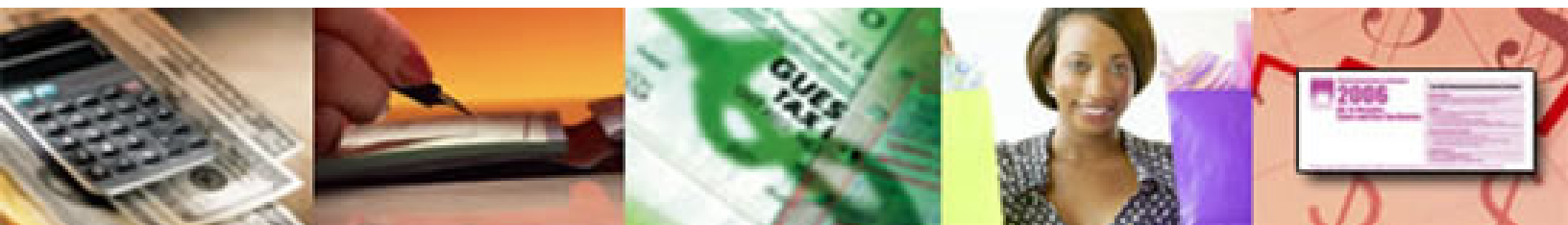


Florida Department of Revenue



Convenience Store Standard Industry Guide



PURPOSE

This guide provides an auditor with information on the subject industry. This information will assist an auditor in recognizing areas to test for compliance with Florida sales and use tax laws.

After reviewing this guide, an auditor will be better able to understand issues involving:

- Tax implications affecting the subject industry;
- Sales tax issues likely to surface relating to the subject industry; and
- Relevant statutes, rules, court cases and other technical documents

Helpful tax publications provided by the Department of Revenue available online:

General:

[Sales and Use Tax Guide for Business Owners](#)

[Audit Information](#)

[Florida Sales and Use Tax](#)

[Discretionary Sales Surtax](#)

[Sales and Use Tax on Tangible Personal Property Rentals](#)

These reference materials and the technical documents cited herein have been provided as informational guidelines for performing tax audits and are intended to be used as internal management memoranda. They are not rules, orders, or policy statements of general applicability, and as such, do not represent the formal position of the Florida Department of Revenue. No representation is made regarding the Department's opinion of the precedential value of the court cases cited herein. They are provided for informational purposes only. Statutes, rules, court cases, or other technical documents subject to change are current as of the publication date of this document. Refer to the Tax Law Library for an updated listing of such documents. The Tax Law Library can be accessed through the Department of Revenue web site:

<http://www.myflorida.com/dor/>

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OVERVIEW OF METHODS OF OPERATION

Operating a chain of convenience stores is a highly competitive business. It is done on a cash basis and is dependent on high sales volume to compensate for a low profit margin. As the name indicates, convenience stores are located in easily accessible places, open longer than most conventional grocery stores, and carry a number of items that may be purchased one at a time. As a general rule, convenience stores sell groceries, novelty items, magazines, beer and wine, and medicinal supplies to the general public. Very often they sell gasoline. Occasionally, lottery tickets and kerosene or LP gas are available. Other sales or services commonly offered are:

- A deli within the store (may or may not offer seating);
- A car wash facility, car vacuuming machines, air dispensing machines;
- Pay phones (owned by the store or rental space);
- Newspaper sales (through a rack or inside the store); and
- Amusement/vending machines.

A recent trend in newer convenience stores is the inclusion of a franchised fast food provider within the facility. The income from these operations is not included with that of the convenience store; however, the rental of the floor space is definitely an income source for the store.

Convenience stores range in size from small “Ma and Pa” stores to large convenience store chains. The owner may operate a single store or store managers may operate multiple locations. The larger chains may conduct business through company-owned and operated stores and may also serve a group of independently owned and operated stores under an agency franchise arrangement. Although they may differ in size, they have common areas of interest to an auditor :

- The inventory is composed of many different items, some are taxable, some are exempt.
- Sales are fairly predictable based on geographic location, seasonal business nature, etc.
- Profitability is based on sales of many items at a low gross margin which results in a rapid turnover of inventory.

Due to the diversity of the items sold, numerous statutes and rules may apply to the typical audit of this industry. According to generally accepted auditing principles, the auditor should conduct a comprehensive pre-audit interview to gain a working knowledge of the taxpayer’s operation. The auditor should also conduct a tour of the business to determine the exact nature of the operation and the types of items and services being sold.

ACCOUNTING SYSTEMS

The auditor will encounter a wide range of accounting systems for this industry. Some taxpayers may have computers to assist in their record keeping; some may have no

records at all and may use the cash register only as a money drawer, not ringing up any sales.

Sales

Due to the types of sales a convenience store makes, the biggest problem is accounting for cash. Problems arise when the cashier does not ring up each sale in the cash register. Sometimes sales are made, cash is taken, and no sale is rung up on the register. Also the nature of this industry is that most sales are made for cash; no checks and few credit cards are accepted, and virtually no local credit is offered. At the end of each shift and at the end of the day, the register is “zeroed out.” There are usually two types of totals on the day’s tapes: an X-total, which is the total for the shift, and a Z-total, which is the total for the day. These tapes carry a total for each type of sale or register key programmed into the register as well as the total amount of tax calculated by the register.

To keep track of their sales, most convenience stores maintain a general ledger and daily or weekly sales reports (recaps of daily sales). These reports commonly list sales by cash register key, for example, taxable grocery sales, exempt grocery sales, beer, cigarettes, fuel, lottery, etc. The total sales for each key are summed and reconciled to the deposit for the day. Adjustments can come in the form of over-rings/under-rings, cash over/short, and “paid outs.” “Paid outs” are expenditures made during the day and paid for with cash from the drawer. The taxpayer usually has receipts for such expenditures attached to the daily recap sheet. These expenditures may or may not be for inventory (resale) items. A “Z” tape, or summary tape, from the cash register is also usually attached to the recap sheet to support the taxpayer’s figures. Many taxpayers maintain detailed cash register tapes, listing each sale for the day. These are filed separately from the recap sheets. Daily or weekly sales are summarized and either posted to the monthly sales reports or the general ledger, or carried straight to a financial statement.

Disbursements

Most convenience stores maintain some form of disbursement journal. This can range from a computerized version, where every check is listed and posted to the correct expense account, to a piece of notebook paper with handwritten entries. Invoices for expenditures are often filed under the name of the vendor. The majority of purchases will consist of items to be resold. Examination and reconciliation of the receipts for “paid-outs” are useful in determining the accuracy of the daily expenditures.

Occasionally, the auditor may encounter a small convenience store, often referred to as a “Mom and Pop,” with few records or none at all. These taxpayers are usually keeping the books the same way as their predecessors in the business. Extra care needs to be used to determine whether all sales and purchases are accounted for.

OTHER ASPECTS OF BUSINESS

Many convenience stores have income from sources other than sales of merchandise.

Some stores may operate:

- A coin- or code-operated car wash, car vacuuming machines, air dispensing machines;
- A deli that may or may not offer seating for consumption of deli products on the premises;
- Amusement or vending machines, including newspaper sales through a rack; or
- Gasoline, kerosene, or LP gas.

Additionally, sales generated from food stamps can impact the convenience store's taxable ratio. According to generally accepted auditing principles, the auditor should thoroughly review the accounting methods used and conduct a physical examination or walk-through of the store(s) prior to commencing the audit to ensure that all issues are identified and addressed.

Transferee Liability

In addition to a fast turnover in inventory, convenience stores, generally independent dealers, seem to have a fast turnover in ownership. Section 212.10, F.S., makes the current owner of a business liable for the tax liability of the previous owner if a certificate of clearance, issued by the Department, was not obtained from the previous owner. Few individuals observe this requirement, believing that the Department will hold the previous owner liable for any tax deficiency incurred during the time the previous owner owned the business.

Effective July 1, 1991, [Section 31, Chapter 91-112, L.O.F.](#), amended [Section 212.10\(1\), F.S.](#) Based on that amendment, the following provisions apply to the sale of a business.

When a business or stock of goods is sold, any receipt or certificate the owner receives from the Department of Revenue indicating that taxes have been paid or that no tax is due are valid only after the Department has audited the seller's books and records. To protect the purchasing dealer from transferee liability, the seller or purchaser may request an audit of the seller's books and records. The Department of Revenue is authorized to use private auditors to perform the audit and charge the cost of the audit to the person requesting it. Additional discussion of transferee liability is found in [Rule 12A-1.055, F.A.C.](#)

SPECIAL TAX CONSIDERATIONS

Since this industry has large volumes of small dollar amount sales, the rate and ratio method of auditing is preferred. The taxpayer's sales and use tax returns may reflect a

small volume of exempt sales. The auditor makes use of the returns and the rate and ratio method of auditing to determine if the taxpayer has correctly collected sales and use tax on their sales. Inventory in this industry usually turns over a large number of times during the year. The following is the calculation for determining the number of times per year an inventory turns over:

$$\text{Cost of Goods Sold} = \text{Number of times per year} \times \text{Average Inventory}$$

Example: The Cost of Goods Sold = \$64,000
 Beginning Number of Items = 7,100
 Ending Number of Items = 8,000

$$\begin{aligned} \$64,000 &= \$64,000 = 8.5 \text{ times per year or every } 1.41176 \text{ months} \\ 8000 + 7100/2 &= 7550 \end{aligned}$$

In this case, a minimum of two consecutive months should be examined to assure that one inventory cycle has been included.

Lease of Tangible Personal Property

With a convenience store, there is always the possibility of the lease of equipment, particularly fuel pumps for those stores selling fuel. Records related to the lease of tangible personal property should clarify this issue (See [Rule 12A-1.071, F.A.C.](#)).

Gas Sales

Sales of fuel (gasoline, kerosene, LP) are not reported on the Sales and Use Tax Return (DR-15) and should not be included in the sales and use tax audit. These sales are reported on the fuel tax return and are included in a fuel tax audit. Gross sales reported on the federal return, reduced by the amount of fuel sales, should equal the sales for sales tax purposes.

Vending Machines

Vending machine sales include but are not limited to air, soft drinks, food, and newspapers. Most convenience stores that have coolers within the store do not have vending machines on the premises. However, an auditor may encounter a situation where the taxpayer does have one or more types of vending machines. For correct rates, see [Rule 12A-1.044, F.A.C.](#) and [Section 212.0515, F.S.](#)

Amusement Machines

Some convenience stores may have amusement machines inside or outside the store. These machines may include kiddy rides or video games. The machines may be owned and operated by the convenience store owner, or the owner may be leasing real property to the machine owner. For more details, see [Section 212.05\(1\)\(h\), F.S.](#)

Automated Car Wash

Occasionally an auditor may encounter a convenience store that has a separate coin-operated car wash facility. [Rule 12A-1.006\(16\), F.A.C.](#), addresses the taxability of automated car washes. This rule indicates that the charge for a plain wash job, where only detergent or water softener is added to the water, is exempt, but that the entire charge for a wash job, where wax, silicones, or any other substance is added that forms a protective film or coating, is taxable. The purchase of detergents or water softeners for use in the performance of the wash job is taxable to the dealer, but the purchase of materials such as wax, silicones, and the like, which form a protective film or coating, is exempt to the dealer. In addition, the purchase of machinery and equipment, parts and accessories, soaps, brushes, or other supplies for operation of a car wash facility is taxable to the dealer.

When a dealer-operated car wash facility provides both taxable and exempt wash jobs, the dealer must maintain documentation to distinguish the taxable status of each transaction. In all instances where a dealer is unable to differentiate and document the taxable status of each transaction, it is presumed that all wash jobs performed at the facility are taxable.

For coin-operated car wash facilities, tax is calculated at an effective rate of 6.59 percent (plus any applicable discretionary sales surtax) on each taxable transaction. It is presumed that the amount charged for each taxable transaction is adjusted to include tax. When a dealer who operates coin-operated car wash facilities can demonstrate through its books and records that a lower rate is applicable, the tax due on a coin-operated car wash sale shall be at that rate.

Deli

If the store has a deli, sales of prepared foods from the deli are subject to tax, see [Rule 12A-1.011, F.A.C.](#) These sales are most often rung up on the cash register under a special key for deli sales.

A declaratory statement issued in connection with the court case *Albertson's, Inc. v. Department of Revenue* held that Albertson's was not required to collect and remit sales tax on sales from its refrigerated delicatessen case of meats and cheeses sliced and wrapped for consumption off the premises and sold as part of its retail grocery operations, provided that these sales are sufficiently distinct and separable so that they may reasonably and accurately be allocated to the sales of the operation.

Convenience Stores with Multiple Locations

When the taxpayer has multiple locations, it may be necessary to review all locations and select sample periods for each. However, in some instances, it may not be necessary to sample every location if they are comparable in sales mix, geographic location, etc. For example, a convenience store operator may have locations in resort areas and residential areas where the sales mix may be different by area.

Food Stamps or WIC

Food purchased with food stamps or Special Supplemental Food Program for Women, Infants and Children (WIC) vouchers requires adjustments in the methods used to conduct the sales portion of the audit. [Section 212.08\(1\), F.S.](#), exempts all food and drinks for human consumption purchased with these coupons or vouchers. Adjustments must be made based on the percentage of sales that are allocable to food stamps or WIC coupons. Failure to make the adjustments could result in an overstatement of the taxpayer's liability.

When food and drinks are purchased partly with food stamps or vouchers and partly with cash, the food stamps or vouchers are used to defray the cost of the food and drinks that can be purchased with the food stamps or vouchers but that are not exempt unless so purchased, to the extent that the stamps or vouchers tendered are sufficient to purchase such items.

Example 1: A customer with cash and \$5 of food stamps brings to the counter of a convenience store the following to items:

Milk	\$ 2.59
Bread	1.09
Detergent	2.49
Candy 3 bars @ .55 each	1.65
Soft drinks	<u>2.29</u>
Total	\$10.11

Items 1 and 2, total cost of \$3.68, are exempt from sales tax, whether purchased with stamps, vouchers, or cash. Item 3 cannot be purchased with stamps or vouchers and is taxable. Items 4 and 5, total cost of \$3.94, are exempt when purchased with stamps or vouchers but taxable when purchased with cash. Assume that the customer decides to use \$3.00 of the food stamps to pay the total bill. That \$3.00 of stamps would be applied toward the cost of items 4 and 5, leaving \$0.94 of the cost of those two items subject to tax. Tax would also be collected on item 3, making a total of \$3.43 subject to tax. The cash purchase allocated to items 1 and 2 would be exempt.

Example 2: Same facts as above, except the purchaser elects to use the entire \$5.00 of food stamps toward the total due.

The \$3.94 due on items 4 and 5 would first be paid from the \$5.00 stamps submitted, and the remaining \$1.06 of the stamps would be applied toward the cost of the food in items 1 and 2. None of it could be applied toward the cost of item 3.

Beer and Wine Sales

When beer and wine are sold at a convenience store, tax is collected on the sales price using the effective tax rates established for a package store, unless their records support the application of the bracket system on the selling price. Such convenience stores must

be registered with the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.

GLOSSARY OF TERMS

Bracket System:	A system of computing tax due on amounts less than \$1.00 as prescribed by § 212.12(9)–(10), F.S.
C-store:	Convenience store
Gross Profit Percentage:	The percentage of the retail price that is profit (i.e., cost amount equals \$0.50, retail price equals \$0.75; $.50/.75 = .67$; $100\% - 67\% = 33\%$; 33% is the gross profit percentage)
HBA:	Health and beauty aids
Loss Leader:	A high volume sales item such as soft drinks or beer that is priced below cost and advertised as a sale item. Customers will come into the store for the “sale” item and buy several other items while there.
Markup Percentage:	The percentage the cost price is increased to reach the retail price (i.e., cost amount equals \$.50, retail price equals \$.75; $.75/.50 = 1.50$; markup percentage is 50).
Mom & Pop Store:	A small, family-owned store that has usually been owned and operated by the same family for many years. Accounting systems and records are usually poor in these types of businesses.
Paid-outs:	Daily expenditures paid for with petty cash or cash from the cash register drawer.
“Z” tape:	A portion of the cash register tape that summarizes the day’s sales activity in dollar amounts.

TAX STATUTES AND ADMINISTRATIVE RULES

Topic	Statute(F.S.)	Rule(F.A.C)
Bracket Amounts	212.12(9), (10)	12A-1.004
Car Wash	212.08(4)(a)	12A-1.006(16)
Discretionary Surtax	212.054 212.055	12A-15
Exemptions (Gen. Groceries and Medicine)	212.08(1), (2)	12A-1.001(4), (10)
Fuels & Lubricants (kerosene & LP gas)	212.08(7)(j)	12A-1.059
Medicine & Toiletries		12A-1.020
Rental of Fuel Pumps	212.02(10)(g), (h), and (i) 212.031(1)(a), (c) 212.031(2)	12A-1.070 12A-1.071
Sales of Tangible Personal. Prop. (food & drink, also delis)	212.02(14)(a) 212.05 212.06	12A-1.011 12A-1.003
Vending Machines	212.0515	12A-1.044

COURT CASES IMPACTING THE INDUSTRY**S & W Air Vac Systems, Inc. v. Department of Revenue***22 FLW D2020, 1997 Fla. 5DCA 11646*

Issue: Courts ruled that owners of coin-operated air vacuum machines are liable for use tax as the licensee of real property.

Department of Revenue v. Vanjaria Enterprises, Inc.*21FLW D1447, 675 So.2d 234, 1996 Fla. 5DCA, 9352*

Issue: Courts ruled against the Department's method of assessing tax on the lease of multiple-use properties, stating it was an unpromulgated rule.

Lloyd Enterprises v. Department of Revenue*20FLW D552, 651 So.2d 735, 1995, Fla. 5DCA 5863*

Issue: Court ruled that the Department could not use a projection of a predecessor's tax liability from the successor's records to determine the tax liability of the successor.

Green v. Stuckey's of Fanning Springs*99 So.2d 867, 1957, Fla.S Ct 1147*

Issue: Courts ruled that eating places licensed by the Hotel and Restaurant Commission selling food and drink for immediate consumption cannot be considered exempt from sales tax as sales of "general groceries."

DECLARATORY STATEMENT

DOR 79-2, Albertson's Inc. — The taxability of food sold from delicatessen cases

TECHNICAL ASSESSMENT ADVISEMENTS

TAA 96A-009 Taxability of a lease of fuel pumps and related equipment

TAXPAYER INFORMATION PUBLICATIONS

TIP 96(B)5-13 Reporting fuel sales on the sales and use tax returns

TIP 97(A)1-03 Service station rent reduction programs

TIP 98(A)1-08 Changes in sales and use tax exemption for food products