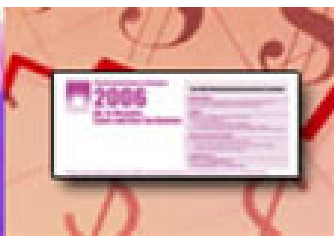
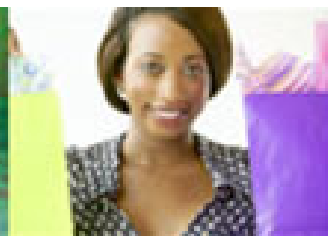
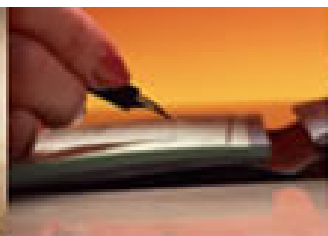


Florida Department of Revenue



Restaurants and Bars 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

Auditors should keep in mind that if an issue arises during an audit where the proper application of the law to a given set of facts is unclear, they can and should submit a request for technical advice pursuant to Rule 12-11.011, F.A.C.

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

Industry Specific:

[Sales and Use Tax on Bars and Lounges](#)
[Sales and Use Tax on Restaurants and Catering](#)

General:

[Audit Information](#)
[Florida Sales and Use Tax](#)
[Discretionary Sales Surtax](#)
[Sales and Use Tax on Tangible Personal Property Rentals](#)
[Sales and Use Tax on Amusement Machines](#)
[Sales and Use Tax on Vending Machines](#)

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

Restaurants

Restaurants range in size from the small hot dog stand to the national chain. They generally operate in the same manner, selling prepared food for consumption on or off the premises.

A large number of restaurants also operate lounges, in connection with the restaurant. These restaurants may operate in a number of different ways. Some serve alcoholic beverages with the food, as a part of the restaurant and some operate lounges that are completely separate operations from the restaurant. Some also offer entertainment and dancing, and a cover charge is sometimes imposed.

Authority to Tax Restaurants

Food and Drink for Human Consumption; Sales of Food or Drinks Served, Cooked, Prepared, or Sold by Restaurants or Other Like Places of Business provides that: “(1)(a) Except as otherwise provided in this section, tax does not apply to sales of food and drink for human consumption which are considered general grocery items. . . Tax, however, does apply to . . . 8. Any food or drink served, cooked, prepared or sold under any of the taxable conditions provided in subsections (2), (3), (5), (6), (7), (8), (9), (10), (14), (15), (17), (18), (19), (20), (21), (23), (24), (25), (27), (28), (29), or (30) of this section” (See Rule 12A-1.011, F.A.C.).

Relevant Statutes and Rules

The primary statute related to Restaurants is Section 212.08 (1) (c), F.S., and the primary rule is Rule 12A-1.011 F.A.C. Other sections of Chapter 212, F.S., have an influence on the treatment of commercial rentals for Florida sales tax purposes.

Bar/Lounges/ Package Stores

The bar may also sell prepared food items. The bar may also offer entertainment and dancing. They may charge patrons a cover charge. The bar/ lounge may sell other items in addition to alcoholic beverages, such as picnic supplies, food, ice, t-shirts, and a variety of party items. The bar/lounge and package store may be located in the same building but in different rooms. Separate cash registers may be used for the bar/lounge and package store, or sometimes the same register will be used for both operations.

Bar/Lounges

The dealer may record each sale and add the tax to the selling price. This results in the dealer reporting all taxes collected. The dealer may inform customers that the selling price includes the tax (putting them on notice). To do this, signs ***must be posted*** throughout the establishment that can be seen by all customers when ordering drinks. If

the dealer selects this method, the tax to be reported will be calculated in the following manner:

Bars and/or cocktail lounges should divide their gross receipts by 1.0659, the result being the gross sales amount; the difference between the gross receipts amount and the gross sales amount should be reported as tax collected.

A combined bar and package store (operated as a single unit), would use the same method as bars and cocktail lounges.

Example: A bar has gross receipts of \$32,545.50 including tax, and signs are posted. Therefore tax due would be computed as follows: \$32,545.50 divided by 1.0659 = \$30,533.35 gross sales...\$32,545.50 less \$30,533.35 = \$2,012.15 tax due.

The dealer may choose to set drink prices that do not include tax and do not post signs to inform customers that the tax is being collected, thus excluding tax from the price. If this method is selected, the dealer would calculate and report the tax as follows:

- Bars and/or cocktail lounges should multiply their gross receipts by 0.0659 and report the results as tax due, and
- A combination bar and package store where the operations are not separated, would use the same method as the bar and cocktail lounge

Example: No signs are posted and gross receipts are \$32,545.50. Computation would be \$32,545.50 x .0659 = \$2,144.75 tax due.

In this example, gross receipts are equivalent to gross sales because tax was not charged on the sale.

A bar or cocktail lounge may operate a package store. The bar/lounge will offer drinks for consumption on the premises and the package store will offer package goods to take out.

Bars and Package Stores

Bars, package stores, and combinations that do not separately record the sales price and tax are required to remit the tax on a percentage of gross receipts. The applicable percentages are:

- 6.35% for package stores; and
- 6.59% for bars and bar/package store combinations

When the taxpayer can demonstrate that the customers have been informed that the price charged includes the tax, the gross receipts may be reduced by the amount of the tax (See Rule 12A-1.057, F.A.C.).

Package Stores

Facilities/Operations that do not sell by the drink for consumption on the premises will be considered a package store. These type operations offer only items to be taken out. In addition to alcoholic beverages, they will offer items such as picnic supplies, food, ice, T-shirts, hats and party items for sale.

The dealer may record each sale and add the tax to the selling price. This results in the dealer reporting all taxes collected.

The dealer may inform his customers that the selling price includes the tax thereby putting them on notice. To do this, signs ***must be posted*** throughout the establishment that can be seen by all customers when making purchases. If the dealer selects this method, the tax to be reported will be calculated by dividing their gross receipts by 1.0635, the result being the gross sales amount; the difference between the gross receipts amount and the gross sales amount should be reported as tax collected.

The dealer may choose to set prices that do not include tax and ***not post signs*** informing customers the tax is being collected, thus excluding tax from the price. If this method is selected, the dealer would multiply their gross receipts by 0.0635 and report the result as tax due.

ACCOUNTING SYSTEMS

The accounting systems of restaurants and bars vary. In the most sophisticated systems, sales of food and beverages are entered into the taxpayer's accounting system when the order is given to the kitchen or the sale is recorded.

In a typical restaurant, a waiter/waitress writes an order on a guest check and delivers it to the kitchen staff for preparation. When the meal has been consumed and the customer prepares to pay, the sale is rung up on a cash register, which prints a paper tape (cash register tape.) At the end of each shift or day, the register is closed out and the cash on hand is balanced to totals on the register tape.

The register tape is then used to post sales to a computerized accounting system or a daily cash report. The register tape may categorize and record food sales, beverage sales, and tax collected separately or may just record a sales total and tax collected.

The daily postings to the accounting system or cash report are the basis for the taxpayer's monthly income statement and the DR-15 (sales tax return). The DR-15 may be prepared by a bookkeeper or manager or may be prepared by the taxpayer's CPA. The DR-15 may also be reconciled to the taxpayer's daily bank deposits. The register tapes and cash reports are usually kept by the taxpayer and are available for review by the auditor. These records can be useful tools in determining the accuracy of the taxable sales, tax collected, and the effective tax rate reported or the amounts that should have been reported.

Bars operations may present much more difficulty in tracking transactions through the accounting systems. The sale of alcoholic beverages, including beer, ale, and wine, is subject to tax. The dealer is required to add the tax amount charged to the sales price of each sale. The dealer is also prohibited from advertising or holding out to the public in any manner the following:

- That any part of the tax will be absorbed
- That the purchaser will be relieved from the payment of tax

However, the dealer is not prohibited from setting prices in such a manner as to avoid the handling of pennies, if each of the dealer's price lists shows the price of beverages and the amount of tax due as separate items.

At times, it may be impractical for a dealer to separately list the price of each beverage and the applicable tax. In such cases, a dealer may remit tax according to one of two methods:

- When the public has not been put on notice through the posting of price lists or a sign prominently displayed throughout the establishment that the tax is included in the total charge, the dealer calculates sales tax by multiplying the gross receipts from the bar by the appropriate rate.
- When the public has been put on notice through the posting of price lists or signs prominently displayed throughout the establishment that tax is included in the total charge, the dealer will calculate the sales tax by dividing the gross receipts from the bar by 1 plus the appropriate tax rate.

REGISTRATION/ FILING REQUIREMENTS

General Tax

Sales tax is levied upon the privilege of engaging in the business or the occupation of selling, renting or licensing tangible personal and certain services in the state, including the business of making mail order sales. It is computed on the sale, rental or licensing price of the personal property sold or service and is collected from the purchaser.

Use tax is levied on the storage, use or consumption in the state of any item of tangible personal property. The primary function of the use tax is to complement the sales tax and make the taxation of tangible personal property uniform, whether produced, purchased and used in Florida or produced and purchased outside of Florida but used in Florida. Together, the sales tax and use taxes provide a uniform method of taxing the sale at retail and/or use of tangible personal property irrespective of where it was purchased.

Collection of Tax

Section 212.21, F.S., provides that the legislative intent is to tax the end consumer. Tax must be added to the selling price and collected from the customer (See Section 212.12(9), F.S.). Such tax must be separately stated on any invoice, charge ticket, sales slip or other record of sale (See Section 212.07(2), F.S.).

A tax becomes state funds at the time of collection (See Section 212.15(1), F.S.). A seller is liable for any tax not collected. In addition, a dealer cannot state that it will absorb the tax or that it will not collect the tax on the sale (See Section 212.07(1), (2), (3), and (4), F.S.).

To protect the seller, Section 212.07(2), F.S., declares the tax a part of the selling price, and therefore, a debt from the purchaser to the seller that is recoverable by law in the same manner as other debts.

Under Section 212.07(8), F.S., a person that has made a taxable purchase and cannot prove the tax was paid to the vendor is liable for the tax. This use tax must be accrued for payment in the same manner as the sales tax.

Credit for Returned Goods

In the event purchases are returned to a dealer by the purchaser or consumer after the tax imposed has been collected from or charged to the account of the consumer or user, the dealer shall be entitled to reimbursement of the amount of tax collected or charged by the dealer, in the manner prescribed by the department.

A registered dealer that purchases property for the dealer's own use pays tax on acquisition, and sells the property subsequent to acquisition without ever having used the property is entitled to reimbursement, in the manner prescribed by the department, of the amount of tax paid on the property's acquisition.

If the tax has not been remitted by a dealer to the department, the dealer may deduct the same in submitting his or her return upon receipt of a signed statement of the dealer as to the gross amount of such refunds during the period covered by said signed statement, which period shall not be longer than 90 days. The department shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected or paid. Such memorandum shall be accepted by the department at full face value from the dealer to whom it is issued, in the remittance for subsequent taxes accrued under the provisions of this chapter. If a dealer has retired from business and has filed a final return, a refund of tax may be made if it can be established to the satisfaction of the department that the tax was not due (See Section 212.17, F.S.).

Rate of Tax/ Surcharges

The sales and use tax rate is generally 6% plus applicable county surtax rate, on each sales transaction...

Bracket System

The bracket system is used to calculate tax when sales transactions fall between whole dollar amounts. The bracket system can cause the sales tax rate on total sales for the month to fluctuate from 6% to 10%. Section 212.12(9), F.S., sets out rates as follows:

- On single sales of less than 10 cents, no tax shall be added.

- On sales in amounts from 10 cents to 16 cents, both inclusive, 1 cent shall be added for taxes.
- On sales in amounts from 17 cents to 33 cents, both inclusive, 2 cents shall be added for taxes.
- On sales in amounts from 34 cents to 50 cents, both inclusive, 3 cents shall be added for taxes.
- On sales in amounts from 51 cents to 66 cents, both inclusive, 4 cents shall be added for taxes.
- On sales in amounts from 67 cents to 83 cents, both inclusive, 5 cents shall be added for taxes.
- On sales in amounts from 84 cents to \$1, both inclusive 6 cents shall be added for taxes

Taxes imposed by Chapter 212 upon the privilege of the use, consumption, storage for consumption, or sale of tangible personal property, admissions, license fees, rentals, communication services, and upon the sale or use of services as herein taxed, shall be collected upon the basis of an addition of the tax imposed to the total price of such admissions, license fees, rentals, communication or other services, or sale price of such article or articles that are purchased, sold, or leased at any one time by or to a customer or buyer. The dealer, or person charged herein, is required to pay a privilege tax in the amount of the tax imposed by this chapter on the total of his or her gross sales of tangible personal property, admissions, license fees, rentals, and communication services or to collect a tax upon the sale or use of services, and such person or dealer shall add the tax imposed by this chapter to the price, license fee, rental, or admissions, and communication or other services and collect the total sum from the purchaser, admittee, licensee, lessee, or consumer. Notwithstanding the rate of taxes imposed upon the privilege of sales, admissions, license fees, rentals, and communication services, or upon the sale or use of services, the following brackets shall be applicable to all transactions taxable at the rate of 6 percent:

On sales in amounts of more than \$1, 6 cents shall be charged upon each dollar of price, plus the above appropriate bracket charge upon any fractional part of a dollar."

**EFFECTIVE TAX RATE
BASED ON THE 6 % TAX BRACKET**

<u>Transaction Amount</u>	<u>Sales Tax Due</u>	<u>Effective Tax Rate Per Transaction</u>
1) \$2.35	\$.15	6.38 %
2) 1.65	.10	6.06 %
3) .20	.02	10.00 %
4) 1.55	.10	6.45 %
5) 4.70	.29	6.17 %
6) 9.40	.57	6.06 %
7) .35	.03	8.57 %
8) 3.12	.19	6.09 %
9) .85	.06	7.06 %
10) <u>1.08</u>	<u>.06</u>	5.56 %

Totals \$ 25.25 \$1.57 6.22 % Effective Rate

$\$1.57 / \$ 25.25 = .0622$ tax collection rate rounded to four digits

Collection Allowance

Section 212.12(1), F.S., provides compensation to registered dealers for the keeping of prescribed records and the proper accounting and remitting of taxes. Where consolidated returns are filed, the allowance is computed for each location included in the consolidated return. Where multiple locations are reported under a single number (prime or county control number), the compensation is computed as though it were a single location.

If the tax return is filed and paid on time the collection allowance is 2.5% of the first \$1,200 of the amount due (maximum \$30).

Effective July 1, 2003, the department will not disallow the collection allowance for the first two noncompliant events in the immediately preceding 12-month period (See Penalties and Interest section).

Self-accruing

Pursuant to Section 212.183, F.S., the Department is authorized to provide by rule for self-accrual of the sales tax under one or more of the following circumstances:

- Where authorized by law for holders of direct pay permits.
- Where tangible personal property is subject to tax on a prorated basis and the proration factor is based upon characteristics of the purchaser.
- Where the taxable status of types of tangible personal property will be known only upon use.

- For commercial rentals where the purchaser rents from a number of independent property owners who, apart from rentals to the purchaser in question, would otherwise not be obligated to register as dealers.
- Where the purchaser makes purchases in excess of \$10 million per year of tangible personal property in any county.
- When the purchaser makes purchases of promotional materials as defined in Section 212.06(11), F.S., and at the time of purchase, the purchaser does not know whether the materials will be exported outside this state.
- For commercial rentals where the purchaser, who is required to remit sales tax electronically as provided under Section 213.755, F.S., rents from a number of independent property owners.

Penalties and Interest

Pursuant to Section 212.15, F.S., the taxes imposed by this chapter shall, except as provided in Section [212.06\(5\)\(a\)2.e.](#), F.S., become state funds at the moment of collection and shall for each month be due to the department on the first day of the succeeding month and be delinquent on the 21st day of such month. All returns postmarked after the 20th day of such month are delinquent.

Any person who, with intent to unlawfully deprive or defraud the state of its moneys or the use or benefit thereof, fails to remit taxes collected under this chapter is guilty of theft of state funds, punishable as follows:

- If the total amount of stolen revenue is less than \$300, the offense is a misdemeanor of the second degree, punishable as provided in Section 775.082, F.S., or Section 775.083, F.S. Upon a second conviction, the offender is guilty of a misdemeanor of the first degree, punishable as provided in Section 775.082, F.S., or Section 775.083, F.S. Upon a third or subsequent conviction, the offender is guilty of a felony of the third degree, punishable as provided in Section 775.082, F.S., Section 775.083, F.S., or Section 775.084, F.S.
- If the total amount of stolen revenue is \$300 or more, but less than \$20,000, the offense is a felony of the third degree, punishable as provided in Section 775.082, F.S., Section 775.083, F.S., or Section 775.084, F.S.
- If the total amount of stolen revenue is Section 775.083, F.S. \$20,000 or more, but less than \$100,000, the offense is a felony of the second degree, punishable as provided in Section 775.082, F.S., Section 775.083, F.S., or Section 775.084, F.S. If the total amount of stolen revenue is \$100,000 or more, the offense is a felony of the first degree, punishable as provided in Section 775.082, F.S., Section 775.083, F.S., or Section 775.084, F.S.

Prosecution of a misdemeanor under this section shall commence no later than 2 years from the date of the offense. Prosecution of a felony under this section shall commence no later than 5 years from the date of the offense.

All taxes collected under this chapter shall be remitted to the department. In addition to criminal sanctions, the department is empowered, and it shall be its duty, when any tax becomes delinquent or is otherwise in jeopardy under this chapter, to issue a warrant for the full amount of the tax due or estimated to be due, with the interest, penalties, and cost of collection, directed to all and singular the sheriffs of the state, and mail the warrant to the clerk of the circuit court of the county where any property of the taxpayer is located. Upon receipt of the warrant, the clerk of the circuit court shall record it, and thereupon the amount of the warrant shall become a lien on any real or personal property of the taxpayer in the same manner as a recorded judgment. The department may issue a tax execution to enforce the collection of taxes imposed by this chapter and deliver it to any sheriff. The sheriff shall thereupon proceed in the same manner as prescribed by law for executions and shall be entitled to the same fees for his or her services in executing the warrant to be collected. The department may also have a writ of garnishment to subject any indebtedness due to the delinquent dealer by a third person in any goods, money, chattels, or effects of the delinquent dealer in the hands, possession, or control of the third person in the manner provided by law for the payment of the tax due. Upon payment of the execution, warrant, judgment, or garnishment, the department shall satisfy the lien of record within 30 days. If there is jeopardy to the revenue and jeopardy is asserted in or with an assessment, the department shall proceed in the manner specified for jeopardy assessment in Section 213.732, F.S.

SPECIAL CONSIDERATIONS

Particular attention should be paid to total sales, exempt sales, and the tax collection rate. An auditor should determine if the sales reported are sufficient for a restaurant or bar of a particular size in a particular area of the state. The auditor may be able to view sales of a similar restaurant or bar and compare the two. Very few sales at a restaurant or bar are exempt. A large number of exempt sales may provide good leads for future audits, if not a large assessment on the present audit. Finally, if sales taxes are being reported at a flat rate, the taxpayer may be ignoring actual tax collected, or incorrectly calculating the rate of tax on bar sales where the tax is included in the price.

Most often, receipts at a restaurant or bar are voluminous. The original document is often a cash register tape or guest check given by the server to the customer, and then rung up on a cash register. In a bar, each sale may only be rung up on a cash register, with the cash register tape being the only receipt. In each instance, each register is usually balanced at the end of each shift or day. The register tape will show total sales, exempt sales, and tax collected. These amounts will then be recorded on a daily sales log or journal that will then be used to prepare the DR-15s and any financial statements. The log or journal is also used to reconcile the taxpayer's cash on hand and bank deposits. It is important that register tapes from several days throughout the audit period be reconciled to the log or journal and then to the DR-15s and bank statements. Be sure that no cash disbursements have been netted against sales.

Usually, the tax rate due and/or reported will exceed the statutory rate. Sometimes the taxpayer will disregard the actual tax collected and remit at a flat rate. Here the taxpayer may have inadvertently collected and failed to remit tax.

A problem that occurs frequently with bars is that the taxpayer does not separately state the tax due. If the taxpayer does this, and is reporting at a flat rate, additional tax will normally be due. It must be established whether the public has been put on notice that tax is included in the price. The auditor needs to determine if signs are posted. Next, it must be determined how the taxpayer is calculating the tax due.

Special Note: Calculation of Sales Tax

Method 1 — Method 1 rates can be used when the public has not been notified, through either the posting of price lists or signs displayed throughout the business, that the tax is included in the price of beverages. When using Method 1, multiply the total receipts by the appropriate rate listed in the chart:

	<u>Method 1 — Tax Rate Chart</u>				
County Tax Rate (%):	6.00	6.50	6.75	7.00	7.50
Package Store (no mixed drink sales)	6.35	6.77	7.035	7.30	7.76
Bar with mixed drink and packaged sales	6.59	6.97	7.24	7.51	7.95

If the county tax rate for the business location under audit is not shown, please contact Taxpayer Services for the appropriate rate.

Example: Package Store, which sells no mixed drinks, with \$2,000 total receipts in a 6% county: Tax due = \$2,000 x 0.0635 = \$127

Example: Dealer, which sells both mixed drinks and packaged goods, with total receipts of \$2,000 in a 6% county: Tax due = \$2,000 x 0.0659 = \$131.80

Method 2 — Method 2 rates can be used when the public either has been notified through the posting of price lists, or signs displayed throughout the business, that the tax is included in the price of beverages. When using Method 2, divide the total receipts by the appropriate rate listed in the chart to determine taxable sales; then subtract taxable sales from total receipts to arrive at the amount of tax to be remitted.

	<u>Method 2 — Tax Rate Chart</u>				
County Tax Rate (%):	6.00	6.50	6.75	7.00	7.50
Package Store (No mixed drink sales)	1.0635	1.0677	1.07035	1.0730	1.0776
Bar (With mixed drink and packaged sales)	1.0659	1.0697	1.0724	1.0751	1.0795

If the county tax rate for the business location under audit is not shown, please contact Taxpayer Services for the appropriate rate.

Example: Package Store with \$2,000 total receipts in a 6% county:
Taxable sales = \$2,000 divided by 1.0635 = \$1,880.58
Tax due = \$2,000 – \$1,880.58 = \$119.42

Example: Dealer with total receipts of \$2,000 in a 6% county:
Taxable sales = \$2,000 divided by 1.0659 = \$1,877.35
Tax due = \$2,000 – \$1,877.35 = \$123.65

Method 3, Reporting Actual Tax Collected — Rule 12A-1.057(3)(c), F.A.C., provides that where the books and records of the dealer can clearly demonstrate without exception a lesser tax rate, the dealer may apply the lesser rate in a manner consistent with methods 1 and 2 above.

It is not unusual to find that a restaurant or bar will tax the food and not tax beverages that are served with the meal or are consumed at the bar. In these instances both of the above methods can be used, with the amount of sales and tax remitted allocated proportionately to the sales of food and beverages.

Gratuities/ Tips

If any part of the gratuity or service charge is used to benefit the employer, such as to offset the cost of employee-paid insurance or uniforms, or to credit some type of employee welfare fund, it must be considered a part of the “sales price” and is subject to tax.

Rule 12A-1.061(3) (c), F.A.C. expresses that any charges made by a dealer to a customer for gratuities, tips, or similar charges are taxable as part of the total sales price unless both of the following conditions are met:

- The charge is separately stated as a gratuity, tip, or other similar charge on a guest's or tenant's bill, invoice, or other tangible evidence of sale; and
- The owner or owner's representative does not receive, either directly or indirectly, any economic benefit from the charge

A gratuity charge collected by a private member-owned club [Restaurant] is not subject to sales tax. Since, the charge is billed separately to Club members and identified as a service charge, and the full amount collected is distributed to the Club employees, with no benefit from the gratuity charge received by the Club, the charge qualifies as a nontaxable gratuity. Whether the charge is billed by the Club to the members monthly, quarterly, or annually has no bearing on whether the charge is subject to sales tax. TAA 01A-023R; *Green v. Surf Club, Inc.*, 136 So.2d 354 (Fla. 3rd DCA 1961), cert. den. 139 So.2d 694 (Fla. 1964)); *Green v. Riviera Country Club*, 156 So.2d 524 (Fla. 3rd DCA 1963), affirmed, per curiam, on the authority of *Green v. Surf Club, Inc.*, supra.

Some restaurants may impose mandatory gratuities, particularly when serving large parties. As specifically regards restaurants and like places of business, Rule 12A-1.011(11), F.A.C., provides that the unless the following conditions are met, a gratuity is taxable as part of the total sales price:

- The charge is a voluntary gratuity or tip added to or by the purchaser to his bill or money given freely by the purchaser over and above the sales price of such food or drink product; and
- Separately stated on the purchaser's bill or invoice as a gratuity or tip; and
- All such voluntary gratuities must be distributed in full to the employees at least every six months with no part accruing to the benefit or advantage of the dealer.

Meals Sold to Employees

Meals consumed by the owner and his family, not a legal entity, are exempt. Rule 12A-1.011(3), F.A.C. states in part, “When the restaurant sells meals to their employees, the charge is taxable; but if they furnish them meals as part of their contract of employment, such meals are exempt”(See TAA 86A1014).

Caterers

Full course meals, sandwiches, hor d’oeuvres, canapés and similar party tidbits sold by caterers and other businesses, which are required to be licensed by the Division of Hotels & Restaurants of the Department of Professional Business Regulations, are taxable. If the sale of these items includes a charge for waiters, bartenders or other services, and/or service personnel the entire transaction is taxable even though such charges are separately stated (See definition of “sales price,” Section 212.02, F.S.).

Caterers are also required to pay tax on purchases or rentals of all dishes, tables, chairs, silver, linens, kitchen utensils, and other items used by them in the conduct of their business.

Example: A company (or individual) was giving a party and had the caterer furnish the food and service personnel. When the caterer invoiced the company for food, bartender, waiters and other miscellaneous items, the entire amount would be subject to the tax.

<i>Food</i>	<i>\$1,200.00</i>
<i>Bartender</i>	<i>150.00</i>
<i>Servers</i>	<i>300.00</i>
<i>Linens</i>	<i>200.00</i>
<i>Total</i>	<i>\$1,850.00</i>
<i>Tax @ 6%</i>	<i>111.00</i>
<i>Total</i>	<i>\$1,961.00</i>

INDUSTRY SPECIFIC ISSUES

Advertising

Creative services provided by an advertising agency, including charges made by an agency to a client for certain items produced in house, (i.e., mock-ups) are exempt under Section 212.08(7) (vv) 2. F.S. Charges made by an advertising agency to a client for the *design* of promotional goods (i.e., t-shirts, mugs, pencils) are exempt, however charges made by an advertising agency for the reproduction or printing of such promotional goods are subject to tax under Section 212.08(7)(vv) 2., F.S. Further guidance is provided by Rule 12A-1.072, F.A.C.

Airports

A person providing retail concessionaire services involving the sale of food and drink or other tangible personal property within the premises of an airport shall be subject to tax on the rental of real property used for that purpose, but shall not be subject to the tax on any license to use the property. For purposes of this subparagraph, the term "sale" shall not include the leasing of tangible personal property (See Section 212.031(1) (a) 10. F.S.).

Bakery Items

- Hot soft baked pretzels are not exempt because they are a 'hot prepared food product' (See Section 212.08(1) (c) (4), F.S.).
- Cookies vendors in shopping center food courts or kiosks are closely related to the Bakery Products for Off-Premises Consumption exemption (See Sections 212.08(1) (b) (3), F.S. and Section 212.08(1) (c) 12, F.S. This is a very fact specific issue. Currently there is no official response, also see: *The Original Great American Cookie Company, Inc., v. Department of Revenue*, DOAH Case No. 92-5543.

Banquet facilities

Pursuant to Section 212.031(1) (a) F.S., sales tax is applicable for the renting, leasing, letting, or granting a license for the use of any real property. Two applicable exemptions are:

- Within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, publicly owned recreational facility, or any business operated under a permit issued pursuant to Chapter 550, F.S. (See Section 212.031(1)(a) F.S.); and
- Separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required or available in connection with a lease or license to use real property, including charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing (See Section 212.031(10) F.S.).

Burglar Protection/ Security

Taxable at 6%, plus applicable surtaxes (See Section 212.05(1) (i) 1. F.S.)

Non-Residential Cleaning/Janitorial/ Pest Control Services

Taxable at 6%, plus applicable surtax (See Section 212.05(1) (i) (1) (b), F.S.).

Coolers Walk In/Stand In

Determine if it is a trade fixture. The determination whether an item is a fixture or real property improvement depends upon review of all the facts and circumstances of each situation. Among the relevant factors that determine whether a particular item is a fixture are the method of attachment, intent of the property holder in having the item attached, real property law, customization, permits or licensing and any legal agreements. A review of the contract involved it was the Departments determination and the installation of the food service equipment was the installation of tangible personal property (See TAA 01A-060).

Comps

Also Promotional items/ Coupons/ Giveaways/ Gift Certificates/ Discounts: Florida law provides various specific provisions for beverage tasting, donated food or beverages, complimentary meals, and other complimentary food items (See TIP 03A01-20).

Tax Exempt Food Packaged with other taxable items

Retailers often package multiple items, including taxable and exempt items, for sale as a single item. When a package contains both exempt food products and taxable food products or other items (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 from the taxable products or other items, no tax is due on the tax- exempt food products. The retailer is required to collect sales tax on the sale of the taxable products or other items.

The application of tax to the total charge (no separate itemization of the tax-exempt food products from the taxable items) for a package containing both exempt food products and taxable food products or other taxable items depends upon the essential character of the complete package. When the taxable item or items represent more than 25 percent of the value of the package, the total charge is subject to sales tax. When the taxable item or items represent 25 percent 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.

Beverage Tasting

Licensed distributors and any other vendor authorized to sell vinous beverages or to sell spirituous beverages are authorized to conduct "wine tasting" and "spirituous beverage tasting" on any licensed premise for the general public of legal drinking age. The wine

and other alcoholic beverages provided at such tasting events are specifically exempt from sales and use tax.

Donated Food Products

Grocery stores and other dealers who sell food products at retail are not subject to tax on any food product donated to a food bank or an organization determined to be currently exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Complimentary Food and Beverages

Dealers whose primary business activities are serving prepared food products or alcoholic beverages for immediate consumption are generally required to pay tax on the cost price of complimentary food products provided to customers at no charge. Examples of complimentary food items served without charge to customers that are generally taxable to the dealer are popcorn, nuts, chips, and pretzels.

Conversely, when dealers of this type provide a complimentary food item or an alcoholic beverage to a customer at the time of, or in connection with, the sale of taxable tangible personal property, no tax is due from the dealer. The complimentary food or beverage is considered to be a part of the sale of the taxable tangible personal property that it accompanied. For example, when a complimentary dessert, beverage, or appetizer is provided to a customer with the purchase of a dinner meal, no additional tax is due.

Concessionaires

Sales of food and beverages from concession stands in drive-in theaters, theaters, and similar places of business, are generally taxable, absent an applicable exemption.

However, please note that property leased, subleased, licensed, or rented to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, publicly owned recreational facility, or any business operated under a permit issued pursuant to Chapter 550, F.S. is not subject to tax. A person providing retail concessionaire services involving the sale of food and drink or other tangible personal property within the premises of an airport shall be subject to tax on the rental of real property used for that purpose, but shall not be subject to the tax on any license to use the property. For purposes of this subparagraph, the term "sale" shall not include the leasing of tangible personal property (See Section 212.031(1) (a)10., F.S., and TAA 05A-019).

Cover charges

Cover charges and the total of any minimum charge made by a restaurant, nightclub or similar place of business are taxable. Non-profit organizations or clubs collecting cover charges for events serving food are required to collect and remit Sales tax on the admissions charge (See TAA 97A-041R).

Deli Item

(See Grocery/Deli SIG)

Delivery

Food products sold for immediate consumption are taxable even when sold as a take-out or to go order (See Section 212.08(1)(c)(3), F. S.).

Dinner Cruise

If there is a separate charge for a meal consumed while on the vessel, tax should be collected on the sale of the meal. If the meals are not separately stated, the cruise line would owe use tax on the meals (See RTA 91A-033). Meals sold while the vessel is dockside or in Florida waters would be subject to sales tax (See TAA 97A-087). The only factors that must be included in the computation of use tax on the meals served on the dinner cruise are materials, labor, service, and transportation costs that are attributable to producing them. This would include materials such as food and paper products, and labor costs attributable to kitchen personnel. These elements should be ascertained from books and records, and use tax should be computed according to generally accepted accounting standards (See TAA 03A-011).

Displays/Racks/Shelving

Determine if it is a trade fixture first (See TAA 01A-060). If not, then it is considered tangible personal property.

E-commerce

Internet, fax, or phone orders of 'prepared on the premises', 'ready for immediate consumption' food from a Florida restaurant that has been packaged and shipped to a Florida address: Taxable. Internet, fax, or phone orders from a Florida restaurant shipped to out of state address: May be subject to tax of destination state. Not Taxable by Florida (See Section 212.06, F.S.).

Equipment Rental

Cloth napkins rented by restaurants are considered to be purchases deemed for use by the restaurant in conducting its business, and, thus, subject to sales and use tax (See TAA 97A-028). Documentary Stamp Tax is due on the total amount financed for equipment rental agreements, including interest, unless the document sets for the principal amount distinguished from the interest portion. However, if the interest is in-conditionally payable, the documentary stamp tax is due on the total amount financed, including the interest portion (See TAA 94rM-001).

Events Generally

Pursuant to Section 212.031(1)(a) 10., F.S., sales tax is applicable for the renting, leasing, letting, or granting a license for the use of any real property. Two relevant exemptions:

- Property leased, let, or licensed to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, publicly owned recreational facility, or any business operated under a permit issued pursuant to Chapter 550, F.S. (See *Concessionaires*), and
- Separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required or available in connection with a lease or license to use real property, including charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing

Fairs

Food vendors should remit the tax at the rate of 6.59% of gross receipts. See *Concessionaires*.

Firewood

Under Rule 12A-1.059, F.A.C., fuels, including cordwood are taxable. However, please distinguish that specially chosen woods consumed by cooking and utilized to impart a particular flavor on the food, thus becoming an integral part of the food itself, may be deemed to be an ingredient, e.g. hickory barbeque ribs, apple-wood smoked bacon, oak-fire seared steaks. While no formal test has been adopted, advertising the type of wood in the product description or menu itself would satisfy the ingredient standard.

Franchises

Regulation of franchises: leases, rentals, sales tax, etc. (See Section 686.403, F.S., and Section 686.402(9), (10), (11) F.S.).

Fund Raising Events

Barbecues, fish fries and similar dinners are taxable even if the entire proceeds are used for charitable purposes.

If a club or similar organization charges its members or guests a greater amount at their luncheon meetings and dinners than it pays the caterer or restaurant that furnishes the meals, the tax may be computed on the charge made by the caterer or restaurant.

In the case of fund raising events when the charge to the patron or customer bears no relationship to the actual value of that which is received, such as a \$50 per place dinner, the tax base shall be the total amount charged by the caterer or restaurateur to the sponsoring organization.

Lease of TPP

See applicable SIG

Lease/Rental of RP

See applicable

Maintenance/Repairs

See applicable TPP Repair and Construction SIGs

Multi-use property - (or Multiple Use)

As regards apportionment for multiple use of real property under Section 212.031 (1)(b), F.S., areas used by a hotel to carry on commercial businesses serving the general public (i.e., restaurant and bar), are not a complimentary part of the charge hotel guests pay for their accommodations).

Preparation On/Off the premises

Salads (raw and leafy green types, and also cooked salads such as potato, pasta, egg, etc.) prepared off the premises that are packaged and sold in bulk to the reseller [restaurant], then repackaged into smaller containers for the ultimate consumer are taxable. The salads are a prepared food product available for immediate consumption and are not sold in the original sealed container, therefore the exemption granted by Section 212.08(1), F.S., does not apply (See TAA 01A-031).

Parking Fees/Services

See also Multi-Use Property.

Percentage rents paid from parking revenues are commercial rental consideration subject to tax (See Section 212.031(1), F.S.).

Raw Food Kits

Raw food kits containing a mix of ingredients such as meats, sauces, spices, and pasta are not subject to sales tax. Kits that are neither cooked nor prepared on the seller's premises and are not available for immediate consumption, but rather require further cooking by the customer away from seller's premises are exempt (See TAA 05A-024).

Seating Area to Accommodate Diners

Food purchased for immediate consumption is taxable. The availability of a seating area for dining assumes immediate consumption (See Section 212.08(1)(c)(2), F.S.) and Rule 12A-1.011, F.A.C.

Shop Supplies & Materials/ Consumables

The following items 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 and Professional Regulation fall under the Packaging and Wrapping exemption: 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 (See Rule 12A-1.040(3), F.A.C., and as defined in Section 212.02, F.S.).

Purchases by these establishments of the following items are taxable: Toothpicks, doilies, placemats, chicken baskets, burger baskets, 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.

Soft Drinks

Taxable, including non- carbonated beverages when sold in cans or similar containers (See Section 212.08(1)(c)(7), F.S.).

Take-out/To Go

See subsection "Delivery".

Vending Machines

Rule 12A-1.044, F.A.C., provides tax rates applicable to sales made through vending machines that do not have tax collection devices. These rates are as follows (as of 7/1/99):

- Soft drinks, coffee and tea - 6.45%;
- Food items, milk products, natural fruits and vegetables - 6.45%;
- Novelty items/ tobacco products - 6.59%

Consideration (typically in the form of a percentage of the proceeds derived from machine sales) provided by the "operator" of a vending machine to a restaurant or similar establishment for the privilege of placing the machine on their premises are subject to tax as a lease or license under Section 212.031, F.S. If the restaurant or similar establishment is the "operator" of the vending machine the consideration provided by the establishment to the owner of the machine is taxable as a lease or license to use tangible personal property. The meaning of the term "operator" as it is defined under Section 212.0515, F.S., and discussed in Rule 12A-1.044, F.A.C., is addressed in detail below.

Since vending machines are so prevalent in our society, it is necessary for an auditor to know how the tax is applied to these transactions. There are two types of vending machines that will be of concern to an auditor.

The first is referred to as a full service machine. A full service machine means the machine is provided and serviced by the machine owner. The owner of the machine places the machine on location, provides all products for the machine, and in addition, removes all receipts from the machine.

The other type of vending machine is referred to as a non-full service machine. This means the machine owner rents the machine to the location owner for a monthly fee, the machine owner may or may not sell the items vended, to the location owner. The location owner services the machine, collects the money, and reports all taxable sales and

the tax at the applicable rate, for all items sold at a sales price of \$.10 or more. Machine repairs and maintenance are normally furnished by the machine owner. The lease of a vending machine by the owner to an operator, is taxable as the rental of tangible personal property.

Notice Requirement

Florida law requires this notice to be posted on all food and beverage vending machines. Report any machine without a notice to (toll-free number). You may be eligible for a cash reward. A penalty of \$250 will be imposed on the operator of each vending machine without proper notice being affixed. Interest will accrue on the penalty, from the date the operator places the machine into operation and will continue to accrue until such date the penalty is paid.

Full Service/ Non-Full Service Determination

Full service and non-full service vending machines are areas that need special attention. The full service taxable transaction occurs between the machine owner and the purchaser of items from the machine. The machine owner would report the tax on all taxable sales through the machine. The purchase and repairs by the owner of these machines is taxable. Additionally, all consideration given to the location operator is taxable as a license to use real property.

The non-full service taxable transaction occurs when the machine owner rents the machine to the location owner. The location owner would be responsible for reporting the tax on all taxable sales through the machine. The purchase and repairs by the owner of these machines are exempt if the machines are for exclusive re-rental. Proceeds derived from vending machines rented or leased by the machine owner to an operator, are taxable as the rental or lease of TPP.

For the purpose of Rule 12A-1.044, F.A.C., Vending Machines, possession of a vending machine means both actual or constructive possession and control. To determine if a person has constructive possession and control the following indicia shall be considered: right of access to the machine; duty to repair; title to the machine; risk of loss from damages to the machine; and the party possessing the keys to the moneybox.

If, based on the indicia set out above, the owner of the machine has constructive possession and control, but the location owner has physical possession of the machine, then the operator shall be determined by who has the key to the moneybox and is responsible for removing the receipts. If both the owner of the machine and the location owner have the keys to the moneybox and are responsible for removing the receipts, then they shall designate in writing who shall be considered the operator. Absent such written designation, the owner of the machine shall be deemed to be the operator.

Special Tax Considerations

The only sales, of ten cents or more, made through a food or beverage vending machine that are exempt, are ice cream in quarts or larger containers, and milk in quarts or larger containers. All sales of food and drinks from vending machines located in the

lunchroom, dining room or cafeteria of schools with grades kindergarten through twelve are exempt. Vending machines located at any other place in these schools and in institutions of higher learning do not receive this exemption.

Effective July 1, 1999, the amount of the tax to be paid on food, beverages, or other items of tangible personal property (TPP) that are sold in vending machines shall be calculated by dividing the gross receipts from such sales by a divisor, provided below, to compute gross taxable sales, and then subtracting gross taxable sales from gross receipts to arrive at the amount of tax due. The applicable tax rate is affected by counties imposing a discretionary sales surtax.

The “effective rates and divisors” are as follows:

PRODUCT SOLD FROM MACHINE DIVISOR	STATE & CO. RATE COMBINED	STATE & CO. EFFECTIVE	RATE
FOOD INCLUDING MILK AND MILK PRODUCTS, NATURAL FRUIT AND VEGETABLE JUICES AND BEVERAGES	6%	6.45%	1.0645
	6.5%	6.86%	1.0686
	6.75%	7.06%	1.0706
	7%	7.26%	1.0726
	7.5%	7.67%	1.0767
TPP SOLD THRU VENDING MACHINES	6%	6.59%	1.0659
	6.5%	7.07%	1.0707
	6.75%	7.27%	1.0727
	7.0%	7.49%	1.0749
	7.5%	7.91%	1.0791

Example:

Gross receipts of \$1,000 for one month from a soda vending machine in a county with no discretionary sales surtax. Combined state (6%) and county rate (0%) is 6%. The “food & beverage vending effective rate” is 6.45% and the divisor is 1.0645.

$$\begin{aligned} \$1,000 / 1.0645 &= \$939.41 \text{ Gross Taxable Sales} \\ \$1,000 - \$939.41 &= \$60.59 \text{ Sales Tax Due} \end{aligned}$$

Example:

Gross receipts of \$1,320 for one month from a “transportation map” vending machine in a county with a 1% discretionary sales surtax. Combined state (6%) and county rate (1%) is 7%. The “TPP vending effective rate” is 7.49% and the divisor is 1.0749.

$$\begin{aligned} \$1,320 / 1.0749 &= \$1,228.02 \text{ Gross Taxable Sales} \\ \$1,320 - \$1,228.02 &= \$91.98 \text{ Sales Tax Due} \end{aligned}$$

Gambling/Amusement Machines

License tax (See Chapter 205.0537 F.S.). Slot machines are not coin-operated amusement machines and are not subject to tax (See Section 551.102(7) F.S. (new as of Jan 06)).

Registration Requirements

Operators of coin-operated amusement machines are required to apply for and obtain registration with the Department of Revenue for sales and use tax purposes. It is not required that a registration certificate be obtained for every machine but only that the operator obtain separate Sales and Use Tax Certificates of Registration for each county in which such machines are located.

An operator of a coin-operated amusement machine may not operate any machine until the operator has registered with the department and has conspicuously displayed an identifying certificate issued by the Department. The identifying certificate shall include a unique number, and the certificate shall be permanently marked with the operator's name, the operator's sales tax number, and the maximum number of machines to be operated under the certificate. An identifying certificate shall not be transferred from one operator to another. The identifying certificate must be conspicuously displayed on the premises where the coin-operated amusement machines are being operated.

The operator of the machine must obtain an identifying certificate before the machine is first operated in the state and by July 1 of each year thereafter. The annual fee for each certificate shall be based on the number of machines identified on the application times \$30 and is due and payable upon application for the identifying device. The application shall contain the operator's name, sales tax number, business address where the machines are being operated, and the number of machines in operation at that place of business by the operator. No operator may operate more machines than are listed on the certificate. A new certificate is required if more machines are being operated at that location than are listed on the certificate. The fee for the new certificate shall be based on the number of additional machines identified on the application form times \$30.

A penalty of \$250 per machine is imposed on the operator for failing to properly obtain and display the required identifying certificate. A penalty of \$250 is imposed on the lessee of any machine placed in a place of business without a proper current identifying certificate. Such penalties shall apply in addition to all other applicable taxes, interest, and penalties.

“Amusement Machine” is defined at Section 212.02(24), F.S. and “Vending Machine” is defined at Section 212.0515(1), F.S.

Water

The sale of drinking water in containers, including water that contains minerals or carbonation in its natural state or water to which minerals have been added at a water treatment facility regulated by the Department of Environmental Protection or the

Department of Health, is exempt. Flavored or carbonated water is not exempt (See Section 212.08(4)(a)(1), F.S.).

EXEMPT TRANSACTIONS

General Exemptions

Doubtful language in taxing statutes should be resolved in favor of the taxpayer. The reverse is true of exceptions and exemptions. The burden of proof for exemptions from tax is the taxpayer's responsibility. The law is to be strictly construed against the taxpayer. The construction of the sales and use tax law is to tax specific transactions and to provide specific exemptions from some of those otherwise taxable transactions. The specific exemptions must be carefully studied to prevent extension beyond the law. Section 212.08, F.S. and Rule 12A-1.001, F.A.C.

Section 212.08(13), F.S., states that no transactions shall be exempt from the tax except those expressly exempted.

Section 212.08, F.S., sets forth most, but not all exemptions. It should be considered along with Rule 12A-1.001, F.A.C.

Section 212.09, F.S., trade-ins or discounts allowed and taken at the time of sale.

Section 212.031, F.S., sublease of space to a convention or industry trade show in a convention hall, exhibition hall or auditorium.

Section 212.031, F.S., lease or rental of land, hall, or other facilities by a fair association subject to Chapter 616, F.S., to a show promoter or prime operator of a carnival or midway attraction is exempt.

Section 212.06, F.S., property imported, produced or manufactured in this state for export.

Section 212.06, F.S., property sold to non-resident dealers for resale outside Florida.

Section 212.06, F.S., use, consumption, distribution or storage of property where a like tax equal to or greater than Florida's tax has been lawfully imposed and paid in another state.

Section 212.07, F.S., agricultural commodities sold by persons other than producers to persons who purchase raw products for use or for sale in the process of preparing, finishing, manufacturing such agricultural commodities for the ultimate retail consumer.

Section 212.02, F.S. and Section 212.05, F.S., when taken together provides exemption for occasional or isolated sales. Section 212.02, F.S. does so by stating that "business" shall not be construed to include occasional or isolated sales by a person who does not hold himself out as engaged in business.

SPECIFIC EXEMPTIONS***Diplomats/officials***

Personal tax exemption cards are issued by the United States Department of State, Office of Foreign Missions (OFM). The cards are used for exemption from state and local sales, restaurant, lodging, and similar taxes normally charged to a customer. The personal card bears the photograph and identification of a duly accredited consulate, embassy, or eligible international organization employee who is entitled to the tax exemption privileges as stated on the card. Payment for goods and services using the personal tax exemption card may be in any form: cash, check, or credit card (See TIP 04A1-08).

Federal Government/ Military Bases***Local and state government entities******Native American***

Casino and other restaurants. No tax liability incurred for restaurants on designated tribe land.

Not-for-Profit Organization

Sales of prepared food to nonprofit organizations engaging in a fundraising activity are exempt.

Ports***Residential Facility for the Aged***

Must be designated or licensed by the state as a care facility for the elderly in order to qualify - Section 212.08(7)(i) F.S.

General groceries -

Section 212.08(1), F.S.

Hospital meals and rooms

Section 212.08(7)(i), F.S.

Meals provided by certain non-profit

Section 212.08(4)(k), F.S.

Religious institutions

Section 212.08(4)(k), F.S.

K-12 schools

Section 212.08(4)(ll), F.S.

Schools, colleges, and universities

Section 212.08(4)(o), F.S.

501(c)(3) organizations

Section 212.08(4)(p), F.S.

School books and school lunches

Section 212.08(4)(r), F.S.

Tasting beverages

Section 212.08(4)(s), F.S.

Professional services

Section 212.08(4)(v), F.S.

Vending machines sponsored by nonprofit/charitable organizations

Section 212.08(4)(z) F.S.

Complimentary meals

Section 212.08(4)(jj), F.S. 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 furnished as part of a packaged room rate, when:

1. The food or drinks are furnished as part of a packaged room rate;
2. No separate charge or specific amount is stated to the guest for such food or drinks;
3. The public lodging establishment is licensed with the Division of Hotels and Restaurants of the Department of Business and Professional Regulation; and
4. The public lodging establishment rents or leases transient accommodations that are subject to sales and use tax (See TIP 03A01-20).

Complimentary items

Section 212.08(4)(oo), F.S.

Donated foods or beverages

Section 212.08(4)(pp), F.S.

DOCUMENTATION OF EXEMPT SALES***Resale Goods***

Annual resale certificates - The selling dealer must obtain a copy of the purchaser's department-issued Annual Resale Certificate (DR-13) prior to making any exempt sales for resale to that purchaser. The certificate must be signed by the purchaser (See Section 212.084, F.S. and Rule 12A-1.038, F.A.C.).

A dealer may make exempt sales for resale to a customer whose current Annual Resale Certificate is on file without seeking a new Annual Resale Certificate for each subsequent transaction during that calendar year.

For sales made to purchasers who purchase on account from a dealer on a continual basis, the selling dealer may rely upon the Annual Resale Certificate beyond the expiration date of the certificate and is not required to obtain a new Annual Resale Certificate each calendar year.

Alternatively, if the purchaser does not have their annual resale certificate available, the selling dealer may, prior to the completion of the sale, obtain a transaction authorization number from the department that will be provided by an automated telephone verification system. Unlike the actual annual resale certificate, a dealer must obtain a transaction authorization number for each transaction, and the dealer may not rely upon the transaction authorization number for subsequent purchases by the same customer.

A selling dealer may often make many sales to the same customer. Rather than obtaining a transaction authorization number for each and every sale transaction with the same customer, the selling dealer may choose to obtain a customer-specific authorization number that will be valid for all sales made to that customer during the calendar year. The electronic method will allow a selling dealer to obtain a vendor authorization number for regular customers with whom the selling dealer has an ongoing business relationship.

The selling dealer may make exempt sales for resale to any of their regular customers for whom the department has issued a vendor authorization number.

A dealer must retain all required documentation pursuant to relevant rules and statutes until described above in his books and records until sales tax may no longer be determined and assessed under the applicable statute of limitations.

Fraudulent resale certificates

Section 212.085, F.S., which provides for a mandatory penalty in the amount of 200% of the tax, for issuing a certificate or statement claiming a tax exemption for the purpose of evading the tax. In addition to the administrative penalty, the action is a third-degree felony.

GLOSSARY OF TERMS

- Cost Price:** The actual cost of articles of tangible personal property without any deductions there from on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.
- Consumption Off the Seller's Premises:** The food or drink is intended by the customer to be consumed at a place away from the dealer's premises (See Section 212.08, F.S.).
- Consumption On the Seller's Premises:** The food or drink sold may be immediately consumed on the premises where the dealer conducts his or her business. In determining whether an item of food is sold for immediate consumption, there shall be considered the customary consumption practices prevailing at the selling facility (See Section 212.08, F.S.).
- Department:** The Department of Revenue
- Gross Sales:** The sum total of all sales of tangible personal property as defined herein, without any deduction whatsoever of any kind or character, except as provided in this chapter.
- Hot Prepared Food Products:** Those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature that is higher than the air temperature of the room or place where they are sold. They may include a combination of hot and cold food items or components where a single price has been established for the combination and the food products are sold in such combination, such as a hot meal, a hot specialty dish or serving, or a hot sandwich or hot pizza, including cold components or side items.
- Intoxicating Beverages or Alcoholic Beverages:** Includes all such beverages as are so defined or may be hereafter defined by the laws of the state.
- Lease, Let, or Rental:** The leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without transfer of the title of such property, except as expressly provided to the contrary herein (See Section 212.02 (10), F.S. for further definition).
- License:** with reference to the use of real property, means the granting of a privilege to use or occupy a building or a parcel of real property for any purpose.
- Premises:** Shall be construed broadly, but is not limited to, the lobby, aisle, or auditorium of a theater; the seating, aisle, or parking area of an arena, rink, or stadium; or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where such meals or beverages are served.
- Retailer:** Includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state.
- Retail Sale or Sale at Retail:** A sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and includes all such transactions that may be made in lieu of retail sales or sales at retail. A sale for resale includes a sale of qualifying property. As

used in this paragraph, the term "qualifying property" means tangible personal property, other than electricity, which is used or consumed by a government contractor in the performance of a qualifying contract as defined in Section 212.08(17)(c), F.S. to the extent that the cost of the property is allocated or charged as a direct item of cost to such contract, title to which property vests in or passes to the government under the contract. The term "government contractor" includes prime contractors and subcontractors. As used in this paragraph, a cost is a "direct item of cost" if it is a "direct cost" as defined in 48 C.F.R. Section 9904.418-30(a)(2), or similar successor provisions, including costs identified specifically with a particular contract (See Section 212.02(14), F.S. for further definition).

Sale:**Includes:**

- (a) Any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.
- (b) The rental of living quarters or sleeping or housekeeping accommodations in hotels, apartment houses or rooming houses, or tourist or trailer camps, as hereinafter defined in this chapter.
- (c) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.
- (d) The furnishing, preparing, or serving for a consideration of any tangible personal property for consumption on or off the premises of the person furnishing, preparing, or serving such tangible personal property which includes the sale of meals or prepared food by an employer to his or her employees.
- (e) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price.

Sales Price:

The total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction there from on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever. "Sales price" also includes the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property. Trade-ins or discounts allowed and taken at the time of sale shall not be included within the purview of this subsection. "Sales price" also includes the full face value of any coupon used by a purchaser to reduce the price paid to a retailer for an item of tangible personal property; where the retailer will be reimbursed for such coupon, in whole or in part, by the manufacturer of the item of tangible personal property; or whenever it is not practicable for the retailer to determine, at the time of sale, the extent to which reimbursement for the coupon will be made. The term "sales price" does not include federal excise taxes imposed upon the retailer on the sale of tangible personal property. The term "sales price" does include federal manufacturers' excise taxes, even if the federal tax is listed as a separate item on the invoice. To the extent required by federal law, the term "sales price" does not include charges for Internet access services which are not itemized on the customer's bill, but which can be reasonably identified from the selling dealer's books and records kept in the regular course of business. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state.

Tangible Personal Property: Includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy, boats, motor vehicles and mobile homes as defined in Section 320.01(1) and (2), F.S., aircraft as defined in Section 330.27, F.S., and all other types of vehicles. The term "tangible personal property" does not include stocks, bonds, notes, insurance, or other obligations or securities; intangibles as defined by the intangible tax law of the state; or pari-mutuel tickets sold or issued under the racing laws of the state.

Use: Includes the exercise of any right or power over tangible personal property incident to the ownership thereof, or interest therein, except that it does not include the sale at retail of that property in the regular course of business. The term "use" does not include the loan of an automobile by a motor vehicle dealer to a high school for use in its driver education and safety program. The term "use" does not include a contractor's use of "qualifying property" as defined by paragraph Section 212.02 (14)(a), F.S.