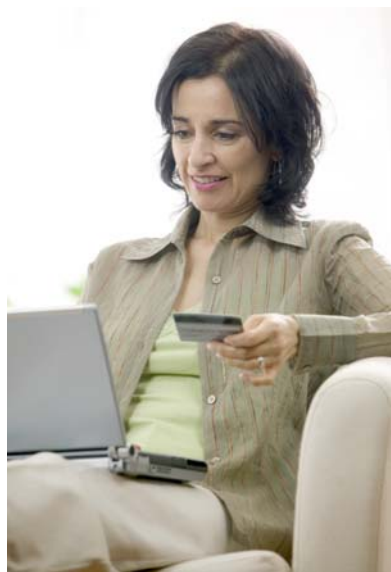
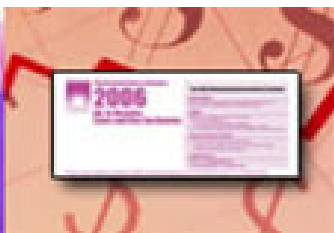
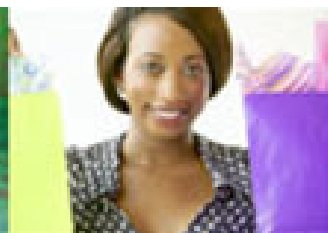


# Florida Department of Revenue



## Retailer and Wholesaler 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:

### 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/>

**TABLE OF CONTENTS**

***METHODS OF OPERATION*.....4**

    ANNUAL RESALE CERTIFICATES ..... 5

***ACCOUNTING SYSTEMS*.....7**

    SALES ..... 7

    INVENTORY ..... 8

    COST ..... 9

***REGISTRATION* ..... 9**

    WHO MUST REGISTER TO COLLECT TAX ..... 9

    WHO IS EXEMPT ..... 10

    INADVERTENT REGISTRATION ..... 10

***BASIC CONCEPTS* ..... 10**

    IMPOSITION OF TAX ..... 10

    DISCRETIONARY SALES SURTAX ..... 11

    BRACKET SYSTEM ..... 12

    TAX DUE/TAX MUST BE SEPARATELY STATED ..... 12

***OTHER ASPECTS OF THE BUSINESS* ..... 12**

***SALES*..... 13**

    EXEMPT SALES ..... 13

    ANNUAL RESALE CERTIFICATES ..... 14

***PURCHASES* ..... 15**

    USE TAX..... 15

    PURCHASES FOR RESALE..... 16

***MISCELLANEOUS ISSUES*..... 16**

    COUPONS, DISCOUNTS, REBATES, FREE MERCHANDISE, AND OTHER PROMOTIONAL GIFTS..... 16

*Coupons* ..... 16

*Discounts* ..... 17

*Rebates*..... 17

*Free Merchandise* ..... 17

*Other Promotional Gifts* ..... 18

    VENDING MACHINES/AMUSEMENT MACHINES ..... 18

    TANGIBLE PERSONAL PROPERTY V. REAL PROPERTY ..... 19

    FABRICATION OF TANGIBLE PERSONAL PROPERTY ..... 20

    COMMERCIAL RENT AND PYRAMIDING ..... 20

    LEASES OF TANGIBLE PERSONAL PROPERTY ..... 20

    POSSESSION TAKEN IN FLORIDA/ DELIVERY OUTSIDE FLORIDA/SALES FOR EXPORT..... 20

    PACKAGING AND LABELING MATERIAL ..... 21

    SERVICE WARRANTY AGREEMENTS..... 23

***OTHER TAXES AND FEES* ..... 25**

    COMMUNICATIONS SERVICES TAX ..... 25

    CORPORATE INCOME TAX ..... 26

    GROSS RECEIPTS TAX ..... 26

    SOLID WASTE FEES, TAX AND RENTAL CAR SURCHARGE..... 26

    UNEMPLOYMENT TAX ..... 27

***GLOSSARY OF TERMS*..... 28**

***METHODS OF OPERATION***

The Florida Statutes define a number of transactions as “sales,” but for the purpose of this guide, a sale is defined as the transfer of title or possession, or both, of tangible personal property for a consideration. This transfer may take place at either the wholesale or the retail level. The term wholesaler originally meant one who sold whole goods such as barrels of tea, barrels of oil, etc. However, over the years the term wholesaler has come to mean anyone selling at a price that is less than retail or only to those in a specific trade; for instance, a plumbing wholesaler sells only to licensed plumbing contractors who are purchasing items for resale. There are also so-called wholesalers such as warehouse clubs who sell to both resellers at reduced prices and to ultimate consumers at retail prices. In this guide, the term, wholesaler, is used to refer to those who sell in comparatively large quantities and not to the ultimate consumer; the term retailer refers to anyone who sells to the ultimate consumer (See Section 212.02(13), F.S.).

Some wholesalers represent a manufacturer of a specific type of item. Some manufacturers prefer to distribute their products to many retail entities through a wholesaler, rather than making small sales to a large number of retail outlets. Therefore, the wholesaler may be used as a distributor of the manufacturer or a representative of the manufacturer. Sometimes this type of wholesaler may take items on consignment or ship items to retailers on consignment. On the other hand, some wholesalers represent many manufacturers and specialize in the tangible personal property for one type of industry, e.g., a wholesaler for women and men’s clothing.

Wholesalers usually limit their area of operation to permit their salespersons to visit customers (retailers) frequently, to keep delivery charges low, and to closely observe the customer’s operations, credit requirements, and financial conditions. Wholesalers also adapt their products to the needs of the areas in which they operate so that their investments in inventory are kept low.

In the case of purchasing, the wholesaler must anticipate consumer demands in light of current economic conditions. Wholesalers must be in a position to buy in slack seasons and store for future use. They must maintain sufficient inventory to take care of anticipated sales for a two- or three-month period.

While wholesalers are typically in the business of selling to retailers for resale, the retail trade includes businesses engaged in selling a wide variety of products to the general public. For example, retail trade can refer to businesses such as shoe stores, home furniture, furnishings and equipment, florists, bookstores, camera supply stores, pawnshops, secondhand stores, antique shops, and many other vendors selling a wide variety of items at the retail level, such as a department store that carries many diverse lines of merchandise.

Sales of tangible personal property, whether by a wholesaler or a retailer, are fully taxable except under the following circumstances:

- When the customer is purchasing the item for resale or the customer claims to be an exempt entity such as a governmental or nonprofit institution. In these instances, the seller must obtain from the customer a resale and exemption certificate to document the tax-free nature of the sale. (for details see section below, titled “Annual Resale Certificates”)
- When the item being sold is statutorily exempt from tax. In these instances, the seller is not required to obtain documentation from the customer but must be able to account for items sold tax-free.

Although most retailers sell to the general public, on occasion a retailer might act as a wholesaler and sell items to other retailers for resale to the ultimate consumer. Both wholesalers and retailers may also make sales to exempt entities and may sell items that are exempt from sales tax. Whether the business is a wholesaler, retailer, or a combination of the two, before beginning the audit, the auditor must thoroughly review the types of transactions conducted to determine the taxable status of tangible personal property involved. The auditor must also pay particular attention to the examination of resale and exemption certificates as well as sales involving items specifically exempt by statute.

### ***Annual Resale Certificates***

Blanket resale certificates on file that were not issued by the Department will be deemed invalid effective January 31, 2000. *Effective February 1, 2000*, a dealer may rely only on a Department-issued annual resale certificate. All annual resale certificates issued by the Department will expire on December 31 of the calendar year for which they are issued.

Effective February 1, 2000, there will be several methods of making an exempt sale for resale:

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 the purchaser. The certificate must be signed by the purchaser. The name of the selling dealer to whom the certificate is being given must also be placed on the copy of the certificate by the purchaser. A dealer may make exempt sales for resale to a customer whose current Annual Resale Certificate is no file without seeking a new Annual Resale Certificate for each subsequent transaction during that calendar year. The copy of the Annual Resale Certificate may be kept on file by the selling dealer through use of imaging, microfiche, or other electronic storage media.

Because the Department-issued Annual Resale Certificate expires at the end of the calendar year, dealers may only make exempt sales for resale to purchasers during the calendar year for which the purchaser’s Annual Resale Certificate is valid. A new Annual Resale Certificate must be obtained by the selling dealer each calendar year. However, for customers who purchase on account from a dealer on a continual basis, the dealer may rely upon a Department-issued Annual Resale Certificate beyond the end of the calendar year, without having to seek annual verification that the certificate is still valid.

For administrative purposes, purchases on account on a continual basis, means that the seller has a continuing business relationship with a purchaser, and makes recurring sales on

account to the purchaser in the normal course of business. On account refers to a sale where the dealer extends credit to the purchaser and records the debt as an account receivable. A sale where payment is made in the form of cash, check, credit card, or note payable, is not a sale “on account.” Additionally, a sale where payment is arranged through a third party financing company is not a sale “on account.”

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 purchase by the same customer.

The selling dealer must document the transaction authorization number on each sales invoice, purchase order, or separate form that is prepared by either the purchaser or the selling dealer. Each sales invoice, purchase order, or separate form must contain the following statement: “The purchaser hereby certifies that the property or services being purchased or rented are for resale” followed by the signature of the purchaser. This process may be handled by the dealer through use of an electronic signature pad or other electronic method. Documenting the transaction authorization number on a properly completed Uniform Sales and Use Tax Certificate-Multijurisdiction (adopted by the Multistate Tax Commission) will be considered sufficient compliance with this paragraph.

The selling dealer should require that the purchaser provide sufficient identification in order to use the transaction authorization number method. Sufficient identification should include a driver license or other photo identification identifying the purchaser, and evidence that the purchaser is purchasing on behalf of the active registered dealer, such as an employee badge, an employee identification card, or a letter on company letterhead that authorizes the purchase.

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**.

Prior to making any exempt sales for resale to such customers, the selling dealer will send the Department a list of its current customers through use of a floppy disk or other electronic media. The electronic format for this list may be obtained from the Department’s web page (<http://sun6.dms.state.fl.us/dor/>) or by calling the Department. The Department will respond with a list (by floppy disk or other electronic media) of the customers and their active dealer status. A vendor authorization number will be issued for those customers that are active registered dealers.

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. The selling dealer may only rely upon the vendor authorization number through the end of the calendar year.

Therefore, the selling dealer will need to request this information from the Department on an annual basis. Vendor authorization numbers issued by the Department in November or December will be valid for the remainder of the current calendar year as well as the next calendar year.

The selling dealer should require that the customer provide sufficient identification in order to use the vendor authorization number method. Sufficient identification should include a driver license or other photo identification identifying the purchaser, and other evidence that the purchaser is purchasing on behalf of the regular customer, such as an employee badge, an employee identification card, or a letter on company letterhead that authorizes the purchase.

A dealer must retain the documentation described above in his books and records until sales tax may no longer be determined and assessed under the applicable statute of limitations. A sale that is not in compliance with the documentation requirements described above will be considered a taxable sale at retail unless the auditor can determine from other resources that the purchaser was actually in the business of reselling the product purchased and had an active dealer registration at the time of the purchase.

### ***ACCOUNTING SYSTEMS***

Although the accounting systems of wholesalers and retailers may differ in size, a department store conglomerate generally has a similar accounting system and encounters the same accounting problems as a corner ten-cent store or a plumbing wholesaler. The accounting system is designed to:

- Determine the financial results of past operations;
- Provide information for appraising current results and making future plans;
- Furnish information upon which credit lines may be established;
- Safeguard company assets;
- Meet government regulations; and
- Facilitate comparison with standard figures published by trade associations, government agencies, etc.

Three main areas must be accounted for: sales, inventory, and costs.

### ***Sales***

Regardless of the business type, all sales must be recorded and accounted for to satisfy the first two functions listed above. Sales may be recorded and tracked in a sales journal, on a cash register tape, or in a computerized system. Some retail businesses have scanners that record sales. Some wholesalers may have a computerized system that not only records the sales but also “picks” the inventory items sold for shipment, checks the number of inventory items left, and establishes an inventory re-order request if needed. Since these types of industries are so varied, the systems for accounting for sales are varied. A part of the accounting system should include all documentation that relates to resale certificates, exempt certificates, shipping documents, and other information that supports the sales and use tax returns the dealer files.

Within the sales area is another accounting area — the accounts receivable control system. This system represents a substantial amount of working capital and must enable the salespersons, credit manager, collection manager, cashier, and controller to maintain effective supervision over the customers' accounts.

The accounting systems used by retailers range from extremely simple manual systems to very large and complex computerized systems. In reviewing a retailer's records, the auditor may encounter a single-entry accounting system, using a very small set of journals and ledgers, or a comprehensive system including a large variety of journals, ledgers, financial statements, depreciation schedules, internal documents analyzing sales and purchases, and various documents used in the preparation of required federal and state tax forms. Regardless of its size or complexity, the auditor must obtain a working knowledge of the taxpayer's accounting system.

In general, all types of industries should be able to track sales, purchases, and inventory to some degree. Sales usually begin at a cash register/computer used to enter the transaction, determine the tax due, and compute the total sales price. Some systems even have the capability to automatically adjust inventories. This aspect is especially useful in instances where inventory cycles and turnover are important. Sales figures are recorded in some type of daily reporting document which may be computerized or manual but which will usually break sales down by some category (taxable or exempt, coupon sales, giveaways, etc.). Usually, the daily reports are compiled from summary tapes generated from the cash register.

Using the daily information, most systems generate weekly or monthly summaries detailing sales activity for the entire period. Ideally, these summaries are carried into the taxpayer's general ledger. In most instances, the sales tax returns are generated using some or all of the previously mentioned documents.

### ***Inventory***

The inventory control system determines and assures that there is something to sell. Ideally, it assures a balanced inventory that conforms to customer demand, whether the customer is the general public or a retailer buying for resale. The records must signal "open to buy" conditions for products approaching minimum quantities, and must "red-flag" obsolete or unacceptable products so they may be disposed of before they become dead stock.

There are two basic types of recording inventory: perpetual inventory and periodic inventory. A perpetual system constantly records and details inventory changes, adding what is bought and deducting what is sold to the inventory records. For each type of goods stocked, a detailed record is maintained that shows:

- The number of units purchased and cost of each,
- The number of units sold and selling price of each sale, and
- The number of units on hand at any point in time that are available for sale.

This continuous record is maintained on a transaction-by-transaction basis throughout the period. Thus, the inventory record provides both the number of units in the ending inventory and the cost of goods sold for the period.

A periodic inventory system contains no detailed records. Under this approach, items in inventory are stocked throughout the year and an actual physical count of the goods remaining on hand is taken periodically. The number of units of each type of goods on hand multiplied by the purchase cost per unit yields the dollar amount of the final inventory. Thus, the balance of goods on hand is not known and the cost of goods sold is not determined until the last day of the period when the inventory count is completed.

### ***Cost***

The cost system must provide for accurate distribution cost analysis to enable the entity to determine whether selling prices of inventory have been set to meet fair competition and to determine which, if any, of the products carried are profitable.

## ***REGISTRATION***

### ***Who Must Register to Collect Tax***

Before a business opens in Florida, the business must first determine whether its business activity, product use, or consumption will be subject to Florida sales tax. Some government agencies require the business to register with the Department of Revenue before they will issue a license. Here are some examples of business activities, product uses, and consumptions that generally require the collection of sales tax or the payment of use tax:

Sales of taxable items at retail:

- Repairs or alterations of tangible personal property;
- Rentals, leases, or licenses to use real property (for example, commercial office space, mini-warehouses, or short-term living accommodations);
- Rental or lease of personal property (for example, vehicles, machinery, equipment, or other goods);
- Charges for admission to any place of amusement, sport, or recreation;
- Operating private membership clubs that provide recreational or physical fitness facilities;
- Manufacturing or producing goods for sale at retail;
- Importing goods from any state or foreign country, for sale at retail or for use in the business;
- Selling service warranty contracts;
- Ordering for delivery in this state and using in this state, on a regular basis, mail-order products on which no sales tax was charged;
- Operating vending or amusement machines; and
- Providing taxable services (for example, investigative and crime protection services, interior nonresidential cleaning services, and nonresidential pest control services).

***Who Is Exempt***

The federal government is exempt from the requirement to collect sales tax. In addition, qualified religious institutions under Section 212.08(7)(m), F.S., are not required to collect and remit sales tax on the sale or lease of tangible personal property.

***Inadvertent Registration***

A sale that is not in compliance with the documentation requirements described above will be considered a taxable sale at retail, unless the auditor can determine from other resources that the purchaser was actually in the business of reselling the product purchased and had an active dealer registration at the time of the purchase or that the purchaser met the requirements of Section 212.07(9), F.S.

In order to meet the requirements of Section 212.07(9), F.S., the purchaser must meet all of the following conditions:

- At the time of purchase, the purchaser was not registered as a dealer with DOR or did not hold a consumer's certificate of exemption from DOR;
- At the time of purchase, the purchaser was qualified to register with DOR as a dealer or to receive a consumer's certificate of exemption from DOR;
- Before applying for relief of any tax, penalty, or interest, the purchaser registered with DOR as a dealer or applied for and received a consumer's certificate of exemption from DOR;
- The purchaser established justifiable cause for failing to register as a dealer or to obtain a consumer's certificate of exemption before making the purchase. Some factors to consider in determining justifiable cause are the complexity of the transaction, the purchaser's business experience and history, whether the purchaser sought advice on his or her tax obligations, and whether such advice was followed, and any remedial action taken by the purchaser; and
- The transaction would have been exempt except for the fact that at the time of purchase the purchaser was not registered as a dealer with DOR or did not hold a consumer's certificate of exemption from DOR.

To qualify, the purchaser must apply for relief before DOR initiates any audit or other action or inquires in regard to the purchaser or the vendor, or, if any audit or other action or inquiry of the purchaser or the vendor has already been initiated, within seven days after being informed in writing by DOR that the purchaser was required to register or to hold a consumer's certificate of exemption at the time the transaction occurred. In lieu of taxes, penalties, and interest that would normally be due, DOR must impose and collect mandatory penalties which cannot be waived. The Department can impose and collect these penalties from either the purchaser or the vendor who failed to obtain proper documentation at the time of the transaction (See TIP 02A01-09).

**BASIC CONCEPTS*****Imposition of Tax***

Florida law provides that each sale, admission charge, storage, or rental is taxable unless the transaction is specifically exempt. Florida's general tax rate is 6%; however, other rates

may apply based upon the type of sale. These include, but are not limited to a 4% tax rate on amusement machine receipts and a 7% tax rate on electricity. Additionally, many counties also impose a discretionary sales surtax, sometimes referred to as a county tax or local option surtax, on transactions that are subject to sales and use tax. The discretionary sales surtax is added to the general tax rate to yield the total tax due.

***Discretionary Sales Surtax***

Florida counties are authorized to levy a discretionary sales surtax on most transactions that are subject to sales and use tax. The basic principle in applying discretionary surtaxes is that they piggyback the state sales and use tax. The discretionary sales surtax rate varies, depending on the county. A retailer that sells and delivers taxable merchandise or taxable services is required to collect the surtax at the rate imposed in the county where the merchandise or service is delivered. The delivery method is not a factor in calculating the surtax. It is the point of delivery that is the determining factor (See Rules 12A-15.003(4)(a), F.A.C. and Rule 12A-1.045, F.A.C.; and TAA 04A-003). For motor vehicle and mobile home sales, use the surtax rate of the county where the vehicle or mobile home will be registered.

<b>Determining When to Collect Discretionary Sales Surtax (county tax)</b>		
<b>If the sale occurs in a:</b>	<b>And delivery is in:</b>	<b>The surtax is:</b>
county with a surtax	the same county	collected
county with a surtax	a county without a surtax	not collected
county with a surtax	a different county with a surtax	collected at the county rate where delivery is made
county without a surtax	a county with a surtax	collected at the county rate where delivery is made
county without a surtax	county without a surtax	not collected

The surtax is not limited to sales of tangible personal property. However, when tangible personal property is sold for more than \$5,000, the surtax only applies to the first \$5,000 of the purchase price. Only the first \$5,000 of a single sale of tangible personal property is subject to discretionary sales surtax if the property is sold as a single item, in bulk, as a working unit, or as part of a working unit. The \$5,000 limit does not apply to commercial rentals, transient rentals, or services.

The \$5,000 limitation is applied on an item-by-item basis, except for very specific circumstances when multiple items will be viewed as a single item. In order for the exception to apply, two tests must be satisfied. First, there must be a single sale in which one purchaser buys all the items at the same time, with a purchase order or other documentary evidence that there has been such a single transaction. Second, the multiple items reflected on that documentation must either be items that are normally sold in bulk, or they must be items that will be assembled into a working unit or a part of one (See Section 212.054(2)(a), F.S. and TAA 01A-042).

Written purchase orders or agreements between selling dealers and purchasers can qualify for the \$5,000 limitation if the written purchase order or agreement is for a specific quantity of tangible personal property to be delivered within a definite specified time. The tangible personal property must be items that are normally sold in bulk or items that

comprise a working unit when assembled. The purchase order or agreement may allow items to be delivered and invoiced in installments and still qualify as a single sale.

Discretionary sales surtax rates may change during the year. New rates become effective on January 1 of each year; however, expiration dates vary. The surtax rates and their expiration dates are listed on Form DR-15DSS, Discretionary Sales Surtax Information).

### ***Bracket System***

Retailers must collect sales and use tax according to a bracket system. Retailers must use this bracket system for items being sold in other than even dollar increments (See Rule 12A-1.004, F.A.C., for the brackets). The tax using the bracket system must be calculated on the total amount of the sale. You can obtain a *Sales Tax Rate Table (Form DR-2X)* and individual bracket cards from your local DOR service center or one of the contacts listed below (See Section 212.02(9), F.S.).

However, it is determined upon audit that a retailer has collected and remitted taxes by applying the applicable tax rate to each transaction as described in subsection Section 212.14(9), F.S., and the dealer rounded the tax due to the nearest whole cent rather than applying the appropriate bracket system, the dealer shall not be held liable for additional tax, penalty, and interest resulting from such failure if:

- (a) The dealer acted in a good faith belief that rounding to the nearest whole cent was the proper method of determining the amount of tax due on each taxable transaction.
- (b) The dealer timely reported and remitted all taxes collected on each taxable transaction.
- (c) The dealer agrees in writing to future compliance with the laws and rules concerning brackets applicable to the dealer's transactions (See Section 212.12(14), F.S.).

### ***Tax Due/Tax Must be Separately Stated***

Florida sales and use tax must be separately stated on the document evidencing the sale, unless it is impractical for the retailer to do so. When it is impractical, the retailer is allowed to use an effective tax rate applied to the gross sales of these specific transactions (For the established tax rates, see Rule 12A-1.008, F.A.C., for newspaper rates; Rule 12A-1.044, F.A.C., for vending and amusement machines; Rule 12A-1.057, F.A.C., for bars and package stores; and Rule 12A-1.080, F.A.C., for concession sales).

Sales tax must be collected the time of each transaction. Retailers may not advertise or indicate that all or any part of the sales tax will be absorbed or paid by the dealer. Retailers are liable for any tax not collected. The full amount of tax on cash sales, credit sales, installment sales, or sales made under any kind of deferred payment plan is due at the time of sale (See Section 212.07, F.S.).

The collection of tax on real property rentals and transient living accommodations is slightly different from other transactions. For these types of transactions, sales tax is due when the payment is received rather than at the time of sale.

### ***OTHER ASPECTS OF THE BUSINESS***

Determining inventory turnover, markup, and shrinkage helps the auditor verify that all goods are being sold at a wholesale level and that the items in inventory are specific to the

wholesaler's business. The turnover level can also verify how obsolete items are handled from inventory. A wholesaler's turnover time may be as long as three to four months, depending on the items being sold and the demand of retail consumers for the items in inventory. As stated before, the wholesaler must anticipate the market of the items.

When auditing retailers, the auditor encounters businesses as varied in function as vendors selling used merchandise in a flea market to large retail chains with multiple departments selling a wide variety of new merchandise. Vendors within this category can be engaged in purely taxable transactions, completely exempt transactions, or a combination of the two. For example, meat markets (SIC #5421) are engaged in the sale of grocery items specifically exempt from tax; shoe stores (SIC #5661), on the other hand, conduct business purely of a taxable nature. Finally, a dealer in farm implements (SIC #5083) may have transactions that are exempt or that are taxed at special statutory rates.

The advent of the so-called "wholesale" buying clubs has added another dimension to the retail trade classification. As implied before, wholesalers, by definition, do not sell to the general public. Rather, wholesalers deliver goods to jobbers and retailers who, in turn, sell to the general public. As a general rule, wholesale clubs are actually retail outlets that sell goods in larger quantities to its members who are the ultimate consumers. However, some wholesale clubs also have members who are retailers; clubs making sales to such members must obtain resale certificates to document the sales as tax exempt. Special care should be given to the review of these entities to determine the true nature of the business prior to conducting the audit.

In either wholesale or retail trade, dealers can have merchandise or inventory out on consignment to some other dealer. The auditor must be aware of these items and how they are reported on the federal tax returns of the taxpayer being audited. The way they are reported on the federal tax returns may not be the way they are reported for sales tax purposes. The consignee who has the items and makes the sale is responsible for the collection and remittance of the sales tax, not the consignor. However, the consignor may report the sale of items on consignment as income on the federal tax return.

## ***SALES***

### **Exempt Sales**

Dealers are responsible for determining if a transaction is taxable or exempt. All sales of tangible personal property to your customers are taxable unless the items are specifically exempt from tax (See *Wanda Marine Corporation v. Department of Revenue*, 305 So.2d 65 (Fla. 1<sup>st</sup> DCA 1974). In this case, the court defined the word "state" to mean one of the states of the United States and not a foreign country. The statute at issue was Section 212.06(8), F.S., regarding use tax of tangible personal property. However, the analysis is the same. The court found that its construction of the term "state" was in keeping with the common usage of the word, and that if the legislature had intended for the term "state" to include foreign countries, it could have done so by adding the phrase "or foreign country" after the word "state" in the exemption, as it had done elsewhere in the Florida Statutes. *Id.* at 69); shipped out of state by you; or your customer presents a valid *Consumer's Certificate of Exemption*, valid *Annual Resale Certificate*, or other documents or

certificates that support the exempt sale. Dealers must maintain documentation to support exempt transactions for a minimum of three (3) years.

Examples of proper documentation are:

- Copies of annual resale certificates,
- Copies of certificates of exemption,
- Documents that support shipment of merchandise out of state, and
- Signed statement (as required by law) to support the exemption.

Items that are exempt from sales and use tax include but are not limited to medicines, most services, and most groceries (See TAA 04A-011). Food items are generally exempt from sales tax when sold in grocery stores to be taken home and prepared (See TIP 03A01-20). Some examples of exempt grocery items are milk, butter, cereal, frozen goods, and canned goods. Examples of taxable items include soap, paper goods, cleaning products, and candy (See TIP 91A01-16). See also the *Nontaxable Medical and General Grocery List (DR-46NT)*.

Federal, state, county, and city governments; and qualified nonprofit organizations, such as religious, charitable, scientific, educational, or veteran organizations (as defined in Section 212.08, F.S.) do not have to pay sales tax on certain purchases. If you believe your organization may qualify for an exemption, you must complete and submit an *Application for Consumer's Certificate of Exemption (Form DR-5)*. The federal government is exempt from the requirement to collect sales tax. In addition, qualified religious institutions are not required to collect and remit sales tax on the sale or lease of tangible personal property.

Federal, state, and local governments and qualifying nonprofit organizations that have been issued a *Consumer's Certificate of Exemption* (DR-14 or DR-14P); can purchase items without paying tax. Certificates of exemption expire every five years. Purchasers must provide you with a copy of their *Consumer's Certificate of Exemption*; otherwise you should collect the tax. In addition, payment must be made with funds of the organization named on the certificate. Employees of exempt organizations paying with personal funds are not exempt, even if they will be reimbursed by the exempt agency.

Due to the extremely broad spectrum of business entities encountered under the retail trade, numerous special considerations can exist. Section 212.08, F.S., contains numerous specific exemptions related to a wide variety of retail businesses. Full and partial exemptions exist for items such as building materials, automobile sales, vending machines, feeds, boiler fuels, and machinery and equipment. Additionally, many industry-specific exemptions are granted as well.

### ***Annual Resale Certificates***

Other sales tax dealers may buy goods for resale tax exempt from wholesalers and retailers by providing a signed copy of their *Annual Resale Certificate*. *Annual Resale Certificate* should not be accepted if the selling dealer knows or has a reason to believe the goods are being purchased for reasons other than those stated on the certificate. If the nature of the customer's business is such that the goods purchased would not normally be resold, the use of the certificate should be questioned. For example, an *Annual Resale Certificate* from a

car dealership should not be accepted for the purchase of office supplies or similar items not normally sold by car dealerships. The wholesaler or retailer must retain signed copies of *Annual Resale Certificates* accepted from its customers until sales tax may no longer be assessed under the statute of limitations (See [TIP 99A01-34](#)).

Blanket resale certificates on file that were not issued by the Department will be deemed invalid effective January 31, 2000. *Effective February 1, 2000*, a dealer may rely only on a Department-issued annual resale certificate. All annual resale certificates issued by the Department will expire on December 31 of the calendar year for which they are issued. Effective February 1, 2000, there will be several methods of documenting an exempt sale for resale:

- A signed copy of the customer's *Annual Resale Certificate* each year;
- Call the Department's toll-free hotline, 877-FL-RESALE (877-357-3725), and enter the customer's sales tax number and receive an authorization number valid only for that transaction. This number should be recorded on the sales slip or invoice; or
- If a customer buys "on account" on a regular basis, a signed copy of the customer's *Annual Resale Certificate* the first time the customer makes a tax-exempt purchase should be kept on file as long as the business relationship remains unchanged. After the first purchase, the seller is not required to ask for another signed copy of the certificate.

For resale transactions before and after February 1, 2000, where documentation has not been presented by the seller, the Department should verify that the purchaser was an active registered dealer at the time of sale and that the item being sold is an item normally resold by the purchaser.

## ***PURCHASES***

### ***Use Tax***

Wholesalers and retailers are responsible for accruing and paying use tax and discretionary sales surtax, if applicable, on their taxable purchases. Use tax complements sales tax and is applied in the same manner as sales tax. The use tax rate and sales tax rate are the same. The "use" component of the sales and use tax provides uniform taxation on items that are purchased outside Florida, but are used or stored in the state (See Sections 212.02(20) and Section 212.05, F.S. and Rule 12A-1.091, F.A.C.).

Use tax is due on these most common taxable purchases:

- Taxable items you purchased through the Internet, a mail-order company, or an out-of state retailer that were not taxed by the seller;
- Items you purchased untaxed for resale purposes from your suppliers that were later used in your business or by you;
- Taxable items you purchased in another state untaxed that were shipped (or brought) into Florida; and
- Taxable services you purchased untaxed from an out-of-state company but used in Florida.

If the item brought into Florida is subject to tax, a credit for lawfully imposed taxes paid to another state, a U.S. territory, or the District of Columbia is permitted. Credit is not given for taxes paid to another country.

### ***Purchases for Resale***

When wholesalers and retailers buy goods and present their *Annual Resale Certificate* to their vendor, it is the responsibility of the wholesaler and retailer to ensure that the goods are actually purchased for resale. If the goods purchased are not intended to be resold, tax should be paid at the time of sale on the purchase by the wholesaler or retailer. If the purchaser knowingly uses its *Annual Resale Certificate* to buy items that will not be resold, it will owe tax plus penalty and interest on the transaction. Additional penalties for intentional misuse of a resale certificate include a 200 percent penalty of tax due and possible criminal conviction of a third degree felony.

The *Annual Resale Certificate* allows you to make the following tax-exempt purchases or rentals for resale, if:

- The purchased or rented goods will be resold or re-rented in your regular business operations;
- The goods will be resold as a component part of another product being sold;
- The services will be resold in your regular business operations; or
- The rentals will be re-rented as real property or tangible personal property.

Your *Annual Resale Certificate* may not be used to buy goods that:

- Will be used rather than resold or rented;
- Will be used prior to selling or renting the goods; or
- Will be used by your business or for personal purposes.

## ***MISCELLANEOUS ISSUES***

### ***Coupons, Discounts, Rebates, Free Merchandise, and Other Promotional Gifts***

#### ***Coupons***

Generally, tax treatment of purchases made, or items obtained, using coupons that result in a reduced price to the consumer is based on whether the retailer can be reimbursed by the manufacturer or a third party for a coupon. For manufacturer's coupons, the sales price on which tax is based is the total selling price before deducting the coupon. A retailer's coupon is a discount that is deducted from the sales price before computing the sales tax. Any additional value assigned by the retailer, such as to double or triple the coupon is also excludable from the sales price.

### Discounts

There are several different types of discounts that an auditor may encounter, such as:

- Scan Cards - Like coupons, scan cards function as discounts given by the retailer who issues the card. Therefore, a discount given by a retailer in connection with the use of the retailer's scan card is deducted from the selling price before computing the sales tax;
- Coupon Books - A coupon book is a collection of discount coupons for a variety of businesses usually assembled by an organization and sold as a fundraising activity. When the coupon is redeemed, it would be considered a seller's discount that is deducted from the selling price before computing the sales tax, unless the coupon is a manufacturer's coupon;
- Discount for Opening or Using Store Charge Account - Some retailers offer an incentive for a customer to open a new store charge account, or to use an existing store charge account, by giving the customer a discount of a percentage of the customer's next purchase using the store charge card. Because the customer is not required to take any additional action once he or she makes the purchase using the store charge account, the discount is irrevocably applied at the time of the sale, and only the reduced selling price is subject to tax; and
- Cash Equivalents – These are items purchased that entitle a person to redeem them in the future to receive tangible personal property or services. Examples of cash equivalents include, but are not limited, to, “dine out” cards, entertainment coupon books, vouchers, gift certificates, and trading stamps (whether or not such items are called “coupons”). The redemption of a cash equivalent is taxable when sold directly by a retailer, based on the retail price of the tangible personal property or services for which the cash equivalent is redeemed.

### Rebates

Rebates provided by manufacturers to purchasers of tangible personal property are not discounts allowed between the seller and the purchaser. The initial purchase of an item and the honoring of a rebate claim by the manufacturer are two separate and distinct transactions. Sales tax is computed on the total sales price, without any deduction for the manufacturer's rebate. Although discounts or “rebates” offered by dealers may be excluded from the dealer's gross receipts from sales, rebates paid by the manufacturer must be included in the calculation of tax, even when the purchaser assigns the rebate to the dealer to reduce the amount that the purchaser pays for the vehicle. Unlike coupons, discounts, and other price reductions, rebates require some action by purchasers (either directly or by retailers as assignees of the purchasers) after the sales have been completed.

### Free Merchandise

Sometimes a retailer transfers tangible personal property at no charge to a customer, where such transfer is not in connection with a promotional sale. The retailer must pay sales and use tax on its purchases of items given away that are provided at no charge and that are not in connection with a sale of items.

Other Promotional Gifts

Retailers may engage in promotional activities that result in various products being given away, such as “two for the price of one” sales, “buy one get one free” sales, and other similar offers. In many cases, the “free” item is transferred only in connection with the purchase of the other tangible personal property. In cases where the item is transferred as a part of a sale of other tangible personal property, it is actually being sold. The retailer in such cases may purchase the item for resale without paying tax.

Sometimes a retailer transfers tangible personal property at no charge to a customer, where such transfer is not in connection with such a promotional sale. The retailer must pay sales and use tax on its purchases of items given away that are provided at no charge and that are not in connection with a sale of items. Guidance regarding the tax consequences associated with such transactions is provided in TIP 03A01-20.

Examples of scenarios where gifts and promotional items may be sold with tangible personal property include:

- Drawings or raffles;
- Free gifts given to customers as promotions;
- Buy one, get one free promotions;
- Free gifts to coupon holders;
- Complimentary gift with purchase of an item; and
- Promotional items given away with a subscription to a publication

***Vending Machines/Amusement Machines***

Sales tax and applicable local surtaxes are due on food, beverages, tobacco, and other items sold through vending machines; and on charges for the use of amusement machines. Beginning January 1, 1995, tax was imposed at the rate of 4 percent on the charges for the use of coin-operated amusement machines. Tax due is calculated by: 1) Dividing the gross receipts from the machine by a divisor (as determined by Section 212.05(1)(h)1., F.S.) to compute taxable sales, and 2) Subtracting taxable sales from gross receipts to arrive at the amount of tax due.

<b>Example</b>
<p>The gross receipts from an amusement machine(s) in a county with a combined sales and surtax rate of 6.5% total \$100.00. Gross receipts divided by the amusement machine divisor for 6.5% rate equals gross sales. Gross receipts minus gross sales equals tax due. Gross sales multiplied by the surtax rate equals discretionary sales surtax collected.</p>
$\$100 \div 1.045 = \$95.69 \text{ (gross sales)}$
$\$100 - \$95.69 = \$4.31$ <p>(tax due, including discretionary sales surtax)</p>
$\$95.69 \times .005 = \$.48$ <p>(discretionary sales surtax portion to be reported on Line 17)</p>

The current figures used for calculating the amount of tax due on vending machine sales may be found in TIP 99A01-15.

Prepaid telephone calling cards sold through a vending machine are also subject to Florida sales tax at the rate of 7 percent. To calculate the tax, the dealer would divide the total receipts by 1.07 to compute gross taxable sales. Then the gross taxable sales should be subtracted from the total receipts to determine the amount of tax due. For additional information on prepaid telephone calling cards sold through vending machines, please see TIP 99A01-18.

The machine operator is responsible for remitting the tax on the gross receipts from the machine. The machine operator is the person responsible for removing the receipts from the machine, with one exception. In the case of amusement machines only, if the written agreement between the machine owner and the location owner does not specify who is responsible for paying the tax, the location owner is responsible for paying the tax regardless of who is responsible for removing the receipts from the machine.

If the machine operator is the machine owner, in addition to paying the tax on the receipts from the machine, the operator is also liable for tax on the rent or license fee paid to the location owner for the use of the real property upon which the machine is placed. The rent or license fee is the percentage of the proceeds from the machine paid to the location owner.

If the machine operator is the location owner, in addition to paying the tax on the receipts from the machine, the operator is also liable for tax on the purchase of the machine or on the rental of the machine from the machine owner. The rental fee is the percentage of the proceeds from the machine paid to the machine owner.

If you have amusement machines at your business location, you must display an *Amusement Machine Certificate* (DR-18C), which authorizes the operation of a specified number of machines. The cost of the certificate is \$30 per year for each machine at each location and is renewed July 1 of each year. To obtain certificates, complete an *Application for Amusement Machine Certificate* (DR-18). The machine operator is responsible for purchasing the certificate (See TIP 95A01-10).

Additionally, each food or beverage vending machine must display a notice containing the owner's name, address, and Federal Employer Identification Number (FEIN) or sales tax registration number (See Section 212.0515, F.S.).

### ***Tangible Personal Property v. Real Property***

Dealers in the retail trade designation may be involved in both the sale of tangible personal property and in the improvement of real property. For example, a dealer may operate show rooms to display and sell items of tangible personal property; the same dealer may also install items of tangible personal property that become real property under various types of improvement contracts, thereby creating a different taxable situation. Some vendors that fit the scenario outlined above include farm supply dealers; nursery, lawn, and garden supply stores; paint and wallpaper dealers; and building materials dealers. The dealer should

collect tax on the total sales price of tangible personal property it sells. The dealer should also pay use tax on the fabricated cost of materials it fabricates and installs in a contract for the improvement of real property (See TAA 05A-003).

### ***Fabrication of Tangible Personal Property***

Fabrication of tangible personal property can be a difficult situation. For example, if glass is cut to size for a particular job at the shop, regardless of whether any further activities are performed in regard to the glass at the shop, that cutting is taxable fabrication because the glass has been transformed from raw material (the uncut piece of glass) into customized components to be used in performing a real property contract. If glass is cut at the shop solely to facilitate its safe handling and transport to a job site for further cutting, processing, and installation, the cutting that occurs at the shop is not taxable fabrication because it does not result in the product that will be used in performing the real property contract (See TAA 00A-046).

### ***Commercial Rent and Pyramiding***

A retailer may also lease part of the business' square footage to another retailer (See TAA 04A-068 for information regarding related party commercial real property rentals). In such instances, the auditor should verify that sales tax is being properly applied to the leasing arrangement. Specifically, Section 212.031(2) (b), F.S., prohibits the pyramiding of tax by a progression of transactions. It should also be noted that this statute does not permit the amount of tax due to the state to be decreased by such a progression of transactions (See TAA 05A-014, TAA 04A-026, and TAA 03A-058) for information regarding pyramiding).

Please note that certain rental arrangements (i.e., property leased or license to a person providing food and drink concessionaire services within a qualifying facility) are not subject to tax under Section 212.031(2), F.S.

### ***Leases of Tangible Personal Property***

Retail dealers may sell tangible personal property in more than one way. The sale may be a transfer of title, or it may be in the form of a lease (See TAA 04A-025 for information regarding whether a transaction is a sale or a lease). The lease may be either a capital lease or an operating lease. For sales and use tax purposes, capital leases are handled in the same manner as an outright sale – tax is due on the entire lease price at the consummation of the lease. In contrast, an operating lease is taxable on each lease payment. If the operating lease is terminated and the lessee purchases the property, tax is due on the balance due on the selling price of the lease. If someone other than the lessee purchases the property, sales tax is due on the total sales price of the purchase (See Rule 12A-1.096, F.A.C., for information regarding capital and operating leases for industrial machinery and equipment for use in new or expanding business).

### ***Possession Taken in Florida/ Delivery Outside Florida/Sales for Export***

In some instances, the seller of tangible personal property may make a sale to a customer who will be taking the items out of state. Unless the purchaser is a dealer registered in another state and provides the seller with an affidavit in compliance with Rule 12A-1.0015(3), F.A.C., such sales are taxable. When a sale takes place under the provision that the seller will ship or mail the item to an out-of-state customer, the sale is not subject to

sales tax because possession of the item was not taken in Florida (See Rule 12A-1.0015(2), F.A.C.). If goods are sold in Florida and the purchaser takes possession within Florida, sales tax applies (See Rule 12A-1.0015(2) (b), F.A.C.). Where delivery of goods takes place outside the state of Florida, the taxpayer must retain documentation to support the exempt nature of the sale. In particular, an aircraft, boat, motor home, motor vehicle, or other vehicle, may be sold tax exempt if delivery occurs outside the state of Florida and the buyer and seller execute a signed, notarized affidavit (See Rule 12A-1.007(7)(a), F.A.C.).

Some sellers are regularly engaged in exporting tangible personal property to businesses and customers out of state. Although the United States Constitution prohibits the states from interfering in or placing burdens on interstate commerce, the Florida Statutes and Rules establish certain criteria that must be met for a sale to be considered a tax-free sale within the exportation process. Basically, when the terms of the sales contract require the goods to be delivered out of state by the dealer himself or by the dealer through a common carrier, the United States Postal Service, or a licensed customs broker, the property is considered committed to the exportation process and is exempt from tax. The goods must be committed to the exportation process at the time of the sale, and the exportation process must remain continuous and unbroken (See Rule 12A-1.0015(2) (b), F.A.C.). While this rule provides examples of ways to commit property to the exportation process at the time of sale, it should be noted that these are not the only possible ways of doing this. Other evidence may be considered in determining whether the property has been sufficiently committed to the exportation process (See also *Great Lakes Dredge & Dock Company v. Department of Revenue*, 381 So. 2d 1078 (Fla. 1<sup>st</sup> DCA 1979)). In this case, joint venture was created to modernize a port in Saudi Arabia. The joint venture was required to provide materials and equipment for use in the construction project to modernize the port. All of the materials and equipment were gathered in Dade County, Florida, so that they could be packaged and shipped together. The Department claimed that, since the materials and equipment came to rest in Florida, the exportation process was not continuous and unbroken, so that the items were taxable (*Id.* at 1079). However, the court held that the purchaser provided sufficient documentation to prove that the goods were intended for export, that they had been committed to the exportation process, and that the process remained continuous and unbroken. Great Lakes produced contracts, bills of lading, and invoices that were marked “for export.” Some of the invoices also required shipment by a certain date. The temporary storage of goods in a warehouse so that they could be packaged and shipped together was merely part of the exportation process, and was not considered a “use” of the materials in Florida. It was found that the goods had begun the exportation process, the purchaser had extensive documentation proving that the goods were intended for export, and there was a high degree of certainty that the goods would in fact be exported, and would not be diverted for domestic use (*Id.* at 1084-1085)).

### *Packaging and Labeling Material*

Section 212.02(14)(c), F.S. states in pertinent part, “.....retail sales', 'sale at retail', 'use', 'storage', and 'consumption' do not include materials, containers, labels, sacks, bags, or similar items intended to accompany a product sold to a customer without which delivery of the product would be impracticable because of the character of the contents and be used one time only for packaging tangible personal property for sale...” In an attempt to clarify this section of statutes Rule 12A-1.029 and Rule 12A-1.040, F.A.C were written.

Wrapping materials include paper, plastic, cloth, metal and combinations of these materials. Regardless of the type of material or the shape of the material, if it is used to secure or protect the goods (accompanies the product, when sold), and is intended for one time use, these items may be purchased tax free as long as the purchaser extends to the seller a valid resale certificate.

**EXAMPLE:** A camera is wrapped in plastic and placed in a box to cushion and protect it from dust and moisture. In addition, prior to shipment, the camera box is wrapped with brown paper. All of these packaging materials can be purchased tax exempt by the camera dealer as packaging material.

Boxes are also considered packaging materials. Consider the camera example above. The camera was wrapped, placed in a box, and then wrapped again. Boxes that are used to transport goods for resale, from one dealer to another, are treated the same as boxes that are received by the ultimate consumer and are exempt to the camera dealer when purchased.

**EXAMPLE:** An aspirin manufacturer places each bottle of aspirin in a box and then packs 48 boxes in a larger box for shipment to the retailer. Both of these boxes are exempt as packaging material. The shipment of the aspirins would be virtually impossible without the boxes. The bottle is necessary to maintain a specific count and cleanliness. The box containing the bottle is optional to the manufacturer, but since it accompanies the product to the ultimate consumer, it is purchased by the manufacturer tax free. The box containing the 48 bottles of aspirin is necessary for protecting the goods in transit and for ease in handling.

Pallets are portable platforms usually constructed of wood or paper. Items are placed on the pallets with machinery such as a forklift, to allow easy handling. The pallets may be purchased tax exempt if they are intended for one time use. Otherwise, pallets that are required to be returned are taxable because they will be used again.

If a manufacturer purchases pallets for the purpose of shipping the products to its customers with no charge to the customer for the pallets, and does not desire or expect the pallets to be returned, the purchase of such pallets would not be subject to the tax.

If a manufacturer uses the pallets for storage of products, and not for shipment, the purchase of the pallets would be subject to the tax.

If a manufacturer sells pallets to its customers, tax must be collected on the amount charged to the customer. If the manufacturer requires return of the pallet and charges the customer a deposit, the deposit is exempt. The manufacturer would pay tax on the purchase price of the pallet.

Tying materials are items such as string, cord, rope or any other similar material used to secure a package. These materials are granted the same tax exemption as other packaging materials.

Banding materials are usually steel, plastic or nylon straps used to secure boxes and crates. They could be used to hold the items to a pallet. Banding materials include the devices used to hold the two ends of the straps in place. Both tying and banding materials are treated in the same manner as boxes and other previously discussed items, and when these items are purchased for one time use, they may be purchased tax exempt.

*EXAMPLE: Continuing with the shipment of aspirin, the shipper would have difficulty loading a pallet of 48 boxes that were simply stacked on the pallet. However, the use of banding materials converts the 48 boxes into a single package that is more easily handled.*

Dunnage is lumber or other materials, such as air bags, that are placed under the bottom layer, and between succeeding layers of goods loaded into trucks and rail cars. Dunnage is used to protect the goods during transit. The taxable or exempt status of dunnage materials is determined in the same manner as pallets. If returnable, and intended for more than a one-time use, they are taxable at the time of purchase.

### *Service Warranty Agreements*

Service warranty is defined as any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property, whether or not the contract provides for the furnishing of parts (See Section 212.0506, F.S., Rule 12A-1.105, F.A.C., TAA 03A-025R, TAA 00A-038, and TAA 97A-051).

Some examples are:

- Service contract covering the repair of a component part of a motor vehicle;
- Service contract covering an appliance, such as a refrigerator;
- Service contract covering the cost of repair or replacement of a television set;
- Maintenance contract covering labor only to repair or maintain computer hardware; and
- Service agreement covering the cost of labor providing for parts at an additional charge to repair a washing machine.

The definition of service warranty does not include the following:

- Contracts or agreements to repair, maintain, or replace tangible personal property sold at retail tax exempt, such as a wheelchair; or
- Contracts or agreements covering tangible personal property that becomes a part of real property, such as a central air conditioning system.

Tax is due on the total consideration received or to be received by any person, for the privilege of engaging in the business of soliciting, offering, providing, entering, issuing, or delivering any service warranty. The tax for the service warranty shall be collected and remitted by the person receiving the consideration (seller) from the service warranty agreement holder (purchaser) at the time such consideration is received.

If the person receiving consideration from the service warranty agreement holder is not the person issuing such warranty, then the issuer of the service warranty shall take from that person, in lieu of sales tax, a certificate to the effect that the service warranty was purchased for resale.

When a service agreement is sold in conjunction with the lease of tangible personal property tax is due at the time of the sale of the service agreement. When the charge for the service warranty (on which tax has been collected) is prorated over the term of the lease payments and separately stated in the lease agreement it is exempt.

When a service warranty contract is assigned to a subsequent purchaser of the property covered by such contract, the total consideration received from such assignment is taxable.

**EXAMPLE:** A motor vehicle service agreement is assigned to a subsequent purchaser of a motor vehicle covered by the agreement for a \$200 assignment fee. Tax is due on the assignment fee in the amount of \$12 ( $\$200 \times .06 = \$12$ ).

When a service warranty is cancelled and the consideration paid is refunded to the warranty holder, the person who remitted the tax to the Department shall also refund to the warranty holder the tax paid by the warranty holder for the purchase of the service warranty.

When a service warranty is cancelled and the amount refunded to the warranty holder on a prorated basis, the person who remitted the tax to the Department shall also refund the tax paid by the warranty holder based on the same proration.

The payment of any claim arising under a taxable service warranty by the person issuing the service warranty to the person performing repairs is not subject to sales tax.

The payment of all or any portion, of a claim arising under a taxable service warranty by the service warranty holder to the person performing repairs is subject\* to sales tax. Such taxable transactions include, but are not limited to, the following:

- Deductible paid by the service warranty holder;
- Amount paid by the service warranty holder directly to the person performing repairs or maintenance of the product for which the warranty holder may be subsequently reimbursed by the issuer of the service warranty; and
- Payment by the warranty holder for repairs or maintenance that are not covered by the service warranty.

**Note:** If the nature of the repair was a labor only repair or the item repaired is for resale, or the repaired item was shipped out of state, or the service warranty holder is an exempt organization, the payment would not be taxable. However, if the repair of the item included parts furnished by the repairman, the payment would be taxable.

The partial exemption for the sale of new or used motor vehicles to a resident of another state does not apply to the sale of service warranty contracts.

*EXAMPLE: A resident of Atlanta purchases a motor vehicle from a Florida motor vehicle dealer for \$15,000 and a service warranty for \$700. The purchaser executes a notarized statement of his intent to license the vehicle in Georgia within 10 days from the date of purchase. The tax rate on motor vehicles in Georgia is 4%.*

*The Florida motor vehicle dealer should collect \$600 tax on the sale of the motor vehicle ( $\$15,000 \times .04 = \$600$ ), and \$42 tax on the sale of the service warranty ( $\$700 \times .06 = \$42$ ), for a total of \$642.*

Material and supplies used in the performance of a factory or manufacturer's warranty are exempt:

- If the contract is furnished at no extra charge;
- On equipment guaranteed under the warranty; and
- The materials and supplies used are paid for by the factory or manufacturer.

Transactions involving the issuance of both taxable and exempt warranties must separately apportion and identify in good faith the consideration for each or the entire transaction is taxable. The Department may reform the contract if not apportioned in good faith. Such reformation is considered prima facie correct with the burden of proof on the dealer.

## ***OTHER TAXES AND FEES***

### ***Communications Services Tax***

The communications services tax is a simplified tax that became effective October 1, 2001, replacing several state and local taxes with a simpler tax structure. The tax is imposed on voice, data, audio, video or any other information or signal, including cable services, that are transmitted by any medium (See Chapter 202, F.S.). Some examples of services subject to this tax are: local, long distance, or toll (but not coin-operated) telephone service; cable television; direct-to-home satellite; mobile communications, including detailed billing charges; private line services; pager and beeper services; telephone charges made by a hotel or motel; facsimiles (fax), when not provided in the course of professional or advertising services; and telex, telegram or teletype services. Services not subject to the tax include: information services (e.g., electronic publishing, web-hosting, or end user 900-number service); Internet access, electronic mail, electronic bulletin board or similar online computer services; pay telephone charges; and the sale or recharge of prepaid calling arrangements.

The communications services tax consists of a state portion, a gross receipts portion, and a local portion. The state portion is 6.8 percent and the gross receipts portion is 2.37 percent, for a total of 9.17 percent. Residential service is exempt from the state portion (6.8 percent) but not the gross receipts portion (2.37 percent). Direct-to-home satellite is taxed at a state portion of 10.8 percent and a gross receipts portion of 2.37 percent, for a total of 13.17 percent. Each local taxing jurisdiction has a specific tax rate.

While the state and gross receipts tax rates stay fairly constant, local rates can and do change frequently. To verify current rates, visit the Department's Internet site at [www.myflorida.com/dor](http://www.myflorida.com/dor) or contact Taxpayer Services. The rates are applied to the total invoice or bill for services and must be itemized and separately stated on customer's bills.

The communications services tax has its own annual resale certificate separate from the one issued for sales and use tax. The certificate is only used for tax exempt purchases of communications services that are to be resold. Communications services tax is reported monthly on the *Communications Services Tax Return* (DR- 700016). Dealers are encouraged to file returns electronically. For more information, visit our Internet site, or contact Taxpayer Services or your local service center.

### ***Corporate Income Tax***

Generally, all corporations, associations, or entities doing business, earning income, or existing in Florida are required to file a *Florida Corporate Income/Franchise and Emergency Excise Tax Return* (F-1120 or F1120A). For more information, visit our Internet site, or contact your local service center or Taxpayer Services (See Chapter 220, F.S.).

### ***Gross Receipts Tax***

Gross receipts tax is imposed upon sales of electricity or gas (natural or manufactured) for light, heat, or power. The gross receipts tax rate is 2.5 percent of the provider's total gross income (receipts) derived from the business activity. The person selling the electricity or gas must pay the tax; however, the tax may be separately stated on the customer's bill. Gross receipts tax is remitted on the *Gross Receipts Tax Return* (DR-133). For more information, contact Taxpayer Services or your local service center (See Chapter 203, F.S.).

### ***Solid Waste Fees, Tax and Rental Car Surcharge***

If your business activity involves selling new tires or selling new or remanufactured batteries, you are subject to solid waste (environmental control) fees. If you sell new tires for use on a motor vehicle, you must remit \$1 per new tire at the time of sale. The fee is due whether the tire is sold separately or as a component of the vehicle. The new tire fee must be separately stated on the sales invoice, receipt, or evidence of sale and included in the amount subject to sales tax (See Chapter 403, F.S. and Section 212.0606, F.S.).

If you operate a dry-cleaning facility or dry drop-off facility, you must remit a gross receipts tax of 2 percent on charges for dry-cleaning or laundering of clothing or other fabrics. However, gross receipts tax is not imposed on coin-operated laundry machines, uniform rentals, linen supply services and laundry done on a wash, dry, and fold basis.

If you sell new or remanufactured batteries for use in motor vehicles (for on- or off-road use), vessels, or aircraft you must remit \$1.50 per battery. The fee is due whether the battery is sold separately or as a component of the vehicle, vessel, or aircraft. Separately stating the battery fee on the sales invoice, receipt, or evidence of sale is optional; however, if separately stated, it must be included in the amount subject to sales tax.

If your business activity involves renting or leasing motor vehicles designed to accommodate eight passengers or less, you must include a \$2 per day rental car surcharge in the lease or rental price upon which sales tax is computed. The surcharge applies only to the first 30 days of the lease or rental and must be separately listed on the invoice. Solid waste fees and rental car surcharges are reported on the *Solid Waste and Surcharge Return* (DR-15SW). For more information, contact Taxpayer Services or your local service center.

### ***Unemployment Tax***

Unemployment compensation provides partial, temporary income to workers who lose their jobs through no fault of their own, and are able and available for work. Employers pay Florida unemployment tax as a cost of doing business (See Chapter 443, F.S.).

Workers do not pay any portion of this tax and employers may not make payroll deductions for it.

Generally, you will be required to report wages and pay unemployment tax if you:

- Paid \$1,500 or more in wages within a calendar quarter, *or*
- Have one or more employees for any portion of a day in 20 different weeks in a calendar year, *or*
- Are liable for federal unemployment tax.

Other conditions apply to agricultural and domestic employers and nonprofit organizations. You may also be liable for this tax if you purchase a liable business (either all or a portion), or if the combination of the employer's payroll or employment and the payroll or employment of the business purchased meets liability criteria.

Unemployment tax is paid on the first \$7,000 of wages paid to each employee per year. Reports are filed and tax is paid quarterly. For more information, contact your local service center or Taxpayer Services.

***GLOSSARY OF TERMS***

<b>Agent</b>	<p>A person authorized by another (principal) to act for, or in place of that person; one entrusted with another's business</p> <p>One who represents and acts for another under the contract or relation of agency. A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between the principal and third persons. One who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the other party. One authorized to transact all business of the principal, or all of principal's business of some particular kind, or all business at some particular place</p> <p>Agents employed for the sale of goods or merchandise are called "mercantile agents" and are of two principal classes B-brokers and factors; a factor is sometimes called a "commission agent" or 'commission merchant.'</p>
<b>Allowance</b>	<p>A deduction in the gross sales price that serves to yield a lower net price for an item or service.</p>
<b>Broker</b>	<p>Merchandise — Buyers and sellers of goods and negotiators between buyer and seller, but without having the custody of the property.</p>
<b>Business</b>	<p>Any activity engaged in by any person, or caused to be engaged in by that person, with the object of private or public gain, benefit, or advantage, either direct or indirect.</p>
<b>Cost Price</b>	<p>Actual cost of articles of tangible personal property without any deductions there from on account of the cost of the materials used, labor or service cost, transportation charges, or expenses whatsoever (See Section 212.02(4), F.S.).</p>
<b>Factor</b>	<p>At common law, a commercial agent, employed by a principal to sell merchandise consigned to him for that purpose, for and in behalf of the principal, but usually in his own name, being entrusted with the possession and control of the goods, and being remunerated by a commission, commonly called factorage. A commercial agent to whom the possession of personalty is entrusted by or for the owner, to be sold for a compensation in pursuance of the agent's usual trade or business, with title to goods remaining with the principal and the factor being merely a bailee for the purpose of the agency,</p>
<b>Gross Sales</b>	<p>The total of all sales at invoice prices, not reduced by discounts, allowances, returns, or other adjustments.</p>
<b>Inventory</b>	<p>Goods held for sale or lease or furnished under contracts of service; also, raw materials used or consumed in a business.</p>
<b>Jobber</b>	<p>One who buys and sells goods for others. One who buys or sells on the stock exchange; a dealer in stocks, shares, or securities. One who buys and sells articles in bulk and resells them to dealers. A merchant buying and selling job lots. In general, a middleman in the sale of goods; one who buys from a wholesaler and sells to a retailer. A person who does piecework.</p>
<b>Lease, Let, Rental</b>	<p>Any agreement that gives rise to the relationship of landlord and tenant (real property) or lessor or lessee (real or personal property).</p>

<b>License</b>	The permission by competent authority to do an act that would be illegal, a trespass, or a tort. With the respect to real property, the granting of a privilege to use or occupy a building or a parcel of real property for any purpose.
<b>Middleman</b>	One who merely brings parties together in order to enable them to make their own contracts. A person who is employed both by the seller and purchaser of goods, or by the purchaser alone, to take possession of the goods, for the purpose of doing something about them. One who buys at one price from a manufacturer for resale at a higher price.
<b>Pick</b>	A system where an item of tangible personal property is identified and is physically taken out of inventory and sent to the shipping department or the counter sales department to be delivered to the customer.
<b>Retail</b>	To sell by small quantities, in broken lots or parcels, not in bulk, directly to the consumer. Sales made in minimal quantities to the ultimate consumer to meet personal needs, rather than for commercial or industrial users. In general, wholesalers sell to retailers who in turn sell to consumers.
<b>Retail</b>	A sale for final consumption in contrast to a sale for further sale or processing (i.e., wholesale). A sale to the ultimate consumer.
<b>Retailer</b>	A person engaged in making sales to ultimate consumers. One who sells personal or household goods for use or consumption.
<b>Retail Sale</b>	A sale in small quantities or direct to the consumer, as distinguished from sale at “wholesale” in large quantity to one who intends to resell. The ordinary meaning of the term retail sale within the sales tax statutes is a sale to an ultimate consumer.
<b>Return</b>	Merchandise brought back to the seller for credit or refund.
<b>Sales</b>	A contract between two parties called, respectively, the “seller” (or vendor) and the “buyer” (or purchaser), by which the former, in consideration of payment or promise of payment of a certain price in money or other consideration, transfers to the latter the title and the possession of property.
<b>Trade Discount</b>	A discount from list price offered to all customers of a given type; e.g., a discount offered by a lumber dealer to a building contractor. The difference between the seller’s list price and the price at which the seller actually sells goods to the trade. This discount is different from a discount offered for prompt payment and quantity discount.
<b>Wholesale</b>	Selling to retailers or jobbers rather than to consumers. A sale in large quantity to one who intends to resell.
<b>Wholesale Dealer</b>	One whose business is the selling of goods in gross to retail dealers, and not by the small quantity or parcel to consumers thereof.
<b>Wholesale Price</b>	The price the retailer pays in expectation of obtaining a higher price by way of profit from resale to the ultimate.
<b>Wholesaler</b>	One who buys items in comparatively large quantities and then resells them, usually in smaller quantities, but never to the ultimate consumer. The wholesaler sells either to a “jobber” a sort of middleman, or to a retailer, who in turn sells to the consumer.