

NOTICE OF EMERGENCY RULEMAKING

DEPARTMENT OF REVENUE

RULE TITLE:

RULE NUMBER:

Assignment of Service Addresses to Local Taxing Jurisdictions;

Liability for Errors; Avoidance of Liability Through Use of Specified

Methods; Reduction in Collection Allowance for Failure to Use

Specified Methods

12BER05-1

Department of Revenue Electronic Database

12BER05-2

Certification of Service Address Databases

12BER05-3

Use of Enhanced Zip Code Method to Assign Service

12BER05-4

Addresses to Local Taxing Jurisdictions

SPECIFIC FACTS AND REASONS FOR FINDING AN IMMEDIATE DANGER TO THE

PUBLIC HEALTH, SAFETY, OR WELFARE: The Communications Services Tax

Simplification Law (Chapter 202, F.S.) requires that communications services dealers must

collect and remit local communications services taxes based on the rate of the local taxing

jurisdiction in which customer service addresses are located. The Department of Revenue is

required to develop and maintain an electronic database in which local service addresses are

assigned to local jurisdictions, and local governments are required to provide information for

inclusion in the database. The initial electronic database has been developed, and the

announcement concerning its availability and initial effective date was included in the April 5,

2002, issue of the Florida Administrative Weekly. Use of certain methods to assign service

addresses, including use of a database that has been certified by the Department of Revenue as

meeting statutory accuracy standards, entitles a dealer to a higher collection allowance and to

protection against liability for taxes, interest, and penalties resulting from erroneous service address assignments. The promulgation of these emergency rules ensures the following: 1) that communications services tax dealers are informed of their obligations concerning the assignment of customer service addresses, of the methods of assigning addresses that will entitle dealers to protection against liability, and of the methods of assigning addresses that will entitle a dealer to a higher collection allowance; 2) that the procedures and forms for the Department and local governments to maintain the accuracy of the database on an on-going basis are immediately available; and 3) that the procedures and forms for application for certification by the Department of databases used by communications services tax dealers are available.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized promulgation of emergency rules, and the renewal of such rules, to administer the provisions of the Communications Services Tax Simplification Law. Emergency rules are the most appropriate means of ensuring that local governments have procedures and forms in place to assure they can meet the statutory deadline to submit changes for inclusion in the next update of the Department of Revenue database. Emergency rules are also the most appropriate means for providing communications services dealers and others with procedures and forms to apply for certification of service address databases.

The Department of Revenue has sought comment on these emergency rules to the extent possible within the time restraints resulting from the statutory requirements.

SUMMARY OF THE RULES: Emergency Rule 12BER05-1 provides guidelines on: 1) the requirement that communications services dealers assign customer service addresses to local taxing jurisdictions; 2) the use of certain databases to avoid liability for errors in customer

service address assignments; 3) the due diligence standard applicable to dealers using databases that provide protection from liability for errors in assigning customer service addresses; and 4) the collection allowance available depending on the database used by a communications services dealer. Emergency Rule 12BER05-2 provides guidelines on: 1) the electronic customer service database maintained by the Department of Revenue; 2) the procedures for local taxing jurisdictions to request changes to the Department of Revenue database; and 3) procedures for any substantially affected person to object to the assignment of a customer service address in the Department of Revenue database. Emergency Rule 12BER05-3 provides guidelines on the standards and procedures for certification of a customer service address database developed by a communications services dealer or a vendor. Emergency Rule 12BER05-4 provides guidelines on the use of an enhanced zip code method to assign customer service addresses. These emergency rules also adopt and incorporate by reference four (4) forms required for administration of the Communications Services Tax Simplification Law and two (2) sets of instructions that are incorporated into the on-line Department of Revenue service address database. The forms are: DR-700012, "Application for Certification of Communications Services Database"; DR-700020, "Notification of Method Employed to Determine Taxing Jurisdiction (Communications Services Tax)"; DR-700022, "Local Communications Services Tax Notification of Jurisdiction Change"; and DR-700025, "Objection to Communications Services Tax Electronic Database Service Address Assignment." The on-line instructions incorporated by reference are the "Guide for Address Change Requests" and the "Instructions for Preparing and Submitting Customer Address Files for Certification Testing."

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Jennifer Silvey, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)-922-4727.

THE FULL TEXT OF THE EMERGENCY RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
COMMUNICATIONS SERVICES TAX
EMERGENCY RULES 12BER05-1 THROUGH 12BER05-4

12BER05-1 Assignment of Service Addresses to Local Taxing Jurisdictions; Liability for Errors; Avoidance of Liability Through Use of Specified Methods; Reduction in Collection Allowance for Failure to Use Specified Methods.

(1)(a) Dealers of communications services that are required to collect local communications services taxes must assign each customer service address to a specific local taxing jurisdiction for purposes of determining the appropriate local communications services tax rate to be applied to sales made to that address. Local communications services taxes must be collected and remitted for each service address in accordance with the service address assignments in the latest version of the communications services tax Address/Jurisdiction Database, which is the electronic database maintained by the Department that is updated and adopted every January 1 and July 1, as discussed in Emergency Rule 12BER05-2, F.A.C. Except as otherwise provided in subsection (2), a dealer is liable for any additional local communications services taxes, interest, and penalties that are due as a result of assigning service addresses to incorrect local taxing jurisdictions when the correct local taxing jurisdiction's tax rate exceeds the incorrectly assigned local taxing jurisdiction's tax rate.

(b) In determining the liability for any additional local communications services taxes, interest, and penalties of a dealer who has failed to assign a service address to the correct local taxing jurisdiction, the Department will take into account any amount of local communications

services tax that was collected and erroneously assigned by the dealer to another local taxing jurisdiction. The Department will reallocate and redistribute such amounts between the local taxing jurisdictions involved to apply the payment of any additional local communications services taxes to the correct local taxing jurisdiction. Interest and penalties will be applied only to the additional local communications services taxes due on the sale after crediting the dealer with the amount of local communications services tax collected that was erroneously based on an assignment to an incorrect local taxing jurisdiction.

(2)(a) A dealer will not be liable for any additional local communications services taxes, interest, or penalty due solely because of an error in assigning a service address to a local taxing jurisdiction if the dealer exercised due diligence in employing one of the following methodologies in assigning that service address:

1. The Address/Jurisdiction Database;

2. A database that has been certified by the Department, as provided in Emergency Rule 12BER05-3, F.A.C.;

3. An enhanced zip code method, as discussed in Emergency Rule 12BER05-4, F.A.C.;

or

4. A database that, upon audit by the Department, is determined to have met the accuracy rate criterion required for certification under Emergency Rule 12BER05-3, F.A.C., at the time of the sale on which local communications services taxes are due.

(b) A dealer must timely notify the Department of the method or methods to be used in assigning service addresses on form DR-700020, Notification of Method Employed to Determine Taxing Jurisdiction (R. 05/02, hereby incorporated by reference). If a dealer changes the method

or methods to be used, the dealer must notify the Department on form DR-700020 of the change in method or methods and of the effective date of the change.

(c) Due Diligence. In order to avoid liability for any additional local communications services tax, penalty, and interest resulting from errors in the assignment of customer service addresses to local taxing jurisdictions under paragraph (a), a dealer must exercise due diligence in employing one of the methodologies described. The dealer must exercise the care and attention that is expected from and ordinarily exercised by a reasonable and prudent person when ascertaining the correct amount of tax due on sales made by that person.

1. A dealer is exercising due diligence if that dealer expends reasonable resources to accurately and reliably implement a method described in paragraph (a) and maintains adequate internal controls in the assignment of service addresses.

a. Internal controls in the assignment of service addresses are adequate if the dealer has in place and consistently follows procedures to obtain and incorporate accurate updates to its database at least once every six months and corrects errors in assignments of service addresses within 120 days from discovering or being notified of such errors. A dealer's internal controls must ensure that, when the dealer is notified of an error, the error is corrected and the error is not repeated when a subsequent update is obtained. A dealer may choose to update its database more frequently than once every six months as long as the dealer has in place and consistently follows procedures to obtain and incorporate accurate updates. The auxiliary file described in paragraph (1)(b) of Emergency Rule 12BER05-2, F.A.C., that is maintained by the Department and available to dealers and local government users may be used by the dealer to update the dealer's database more frequently than the minimum of at least once every six months.

b. Internal controls in the assignment of service addresses are not adequate if corrected assignments of service addresses are not maintained or are incorrectly replaced with the previous incorrect assignment. Once notified by any person of an error, the dealer must ensure that the corrected information is preserved in its database. In the event that the error reoccurs, the dealer will not be considered to have exercised due diligence as required for the protection described in paragraph (a).

2. A communications services dealer must maintain records establishing that the dealer has exercised due diligence for the period of time during which the Department is authorized to assess taxes on sales of communications services by that dealer. Such records include instructions or procedures provided to employees, contracts and correspondence with third-party vendors or service providers concerning the acquisition or maintenance of data, documentation establishing that the data was consistently updated at least once every six months, records concerning customer or local taxing jurisdiction objections to the assignment of service addresses and responses to those objections, records of changes made to the assignment of service addresses and when the changes were made, and any other records that pertain to the acquisition, maintenance, and revision of the data upon which service address assignments are based.

3. If a communications services dealer uses a certified database provided by a third party vendor, the communications services dealer must exercise due diligence in its own conduct in using the database. A dealer using a certified database provided by a third party vendor is exercising due diligence if that dealer expends reasonable resources to accurately and reliably implement the third party vendor's certified database and maintains adequate internal controls in the assignment of service addresses. For example, the dealer must follow the vendor's

instructions on use of the database and promptly incorporate any updates supplied by the vendor.
As part of its due diligence, the dealer has a duty to take reasonable steps to ascertain that the
vendor maintains the database so as to ensure continuing qualification for certification. For
example, if a vendor failed to provide an update to the database when scheduled to do so, a
reasonable and prudent dealer relying on that vendor's database would contact the vendor and
make inquiry. A dealer that uses a third party vendor's certified database must ensure that, when
the dealer discovers or is notified of errors in assignments of service addresses, the errors are
corrected within 120 days from discovering or being notified of such errors and the error is not
repeated when a subsequent update is obtained from the vendor.

(d) If a communications services dealer uses multiple databases or methodologies, such
dealer is protected from liability for any additional local communications services tax, interest,
and penalty only as to service addresses assigned as specified in paragraph (a) of this subsection.
Such a dealer is liable as provided in subsection (1) for any additional local communications
services taxes, interest, and penalties in regard to erroneous jurisdictional assignments for any
service address assigned by any other methodology. A dealer that uses multiple databases must
maintain documents demonstrating that a service address has been assigned employing a
methodology described in paragraph (a) in order to be held harmless for any additional local
communications services taxes resulting from erroneous assignment of that service address.

(e)1. Employing a method described in paragraph (a) protects a dealer from liability for
any additional local communications services taxes and related interest and penalties that would
otherwise have been due to a local taxing jurisdiction. A dealer's employment of a method
described in paragraph (a) does not deprive a purchaser of the right to a refund of overpayment
of local communications services taxes resulting from an erroneous assignment of that

customer's service address to a local taxing jurisdiction with a higher rate than that in effect in the correct local taxing jurisdiction. If a purchaser complies with the procedural requirements of Section 202.23, F.S., and establishes that the dealer has incorrectly assigned the purchaser's service address and that an overpayment of local communications services tax has resulted, the dealer must refund the amount of the overpayment to the purchaser. Upon making such refund, the dealer would be entitled to an equal credit or refund from the Department upon proper reporting to the Department of the amount and jurisdictions involved.

2. For purposes of this paragraph, a purchaser that establishes that a dealer has assigned the purchaser's service address to a different local taxing jurisdiction from the one to which that address was assigned in the latest version of the Address/Jurisdiction Database as of the date of the sale has established a presumption that the dealer's assignment was erroneous. If a dealer believes that the assignment of the purchaser's address in the Department's database is incorrect, the dealer should refer that refund claim to the Department for a determination in accordance with the procedures in Section 202.23, F.S. A dealer who assigned a purchaser's service address in accordance with the latest version of the Address/Jurisdiction Database at the time of the sale on which the purchaser asserts that tax was overpaid is not required to make a refund to the purchaser unless the Department has subsequently revised the assignment of that address to correct an error and such revision had retroactive effect as of the date of the sale involved pursuant to paragraph (3)(c) of Emergency Rule 12BER05-2, F.A.C.

(3) Collection Allowance.

(a) Any communications services dealer that employs a methodology described in subparagraph (2)(a)1., (2)(a)2., or (2)(a)3. for assigning service addresses to local taxing jurisdictions is entitled to a collection allowance of .75 percent on taxes collected on service

addresses assigned using the described methodologies. Any communications services dealer that employs any methodology that is not described in subparagraph (2)(a)1., (2)(a)2., or (2)(a)3. for assigning service addresses to local taxing jurisdictions is entitled to a collection allowance of .25 percent on taxes collected on service addresses assigned using such other methodology. A communications services dealer who is not liable for an assessment of additional local communications services taxes, interest, and penalties by reason of employing a database that is found upon audit to meet the accuracy criteria for certification, as described in subparagraph (2)(a)4., is entitled to a collection allowance of .25 percent until such time as an application for certification of the database is made and approved.

(b) A communications services dealer must maintain adequate records to demonstrate that a .75 percent collection allowance was claimed only in regard to taxes that were collected for service addresses that were assigned employing a methodology that qualifies for that allowance. If a communications services dealer's records do not clearly establish the correct collection allowance for each service address, the dealer shall be entitled to only a .25 percent collection allowance on sales made to any service address that the dealer cannot establish was assigned using a database or methodology that qualifies for the .75 percent collection allowance.

(c) A communications services dealer must also timely and correctly remit all tax and meet all the other requirements of Section 202.28, F.S., in order to be entitled to any collection allowance. This rule deals only with determining the amount of collection allowance available to a dealer who otherwise qualifies to receive the allowance. It does not create any separate entitlement to an allowance other than that set forth in Section 202.28, F.S.

(4) All forms referenced in this emergency rule may be obtained by: 1) writing the Florida Department of Revenue, Distribution Center, 168 Blountstown Highway, Tallahassee,

Florida 32304; or, 2) faxing the Distribution Center at (850)922-2208; or, 3) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 4) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 5) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

This rule shall take effect on April 1, 2005.

Specific Authority 202.26(3)(b), (f), (g), (4), 202.28(1) FS. Law Implemented 202.22(1), (4), (5), (6), 202.23, 202.28(1),(2), 202.34(1)(a) FS. History-New 4-1-05.

12BER05-2 Department of Revenue Electronic Database.

(1)(a) The Department maintains an electronic database that assigns service addresses to local taxing jurisdictions in a format that satisfies the requirements of Section 202.22(2)(a), F.S. The electronic database, referred to as the communications services tax Address/Jurisdiction Database, is maintained on the Department's website at the address inside the parentheses (www.myflorida.com/dor). Local taxing jurisdictions and communications services providers are provided with access codes to permit them to register as users of the database. Registered local taxing jurisdictions and communications services dealers have the capability of downloading databases of addresses assigned to each local taxing jurisdiction. Local taxing jurisdictions also have access to an on-line form for requesting changes in service address assignments. The database also has a single address lookup feature that permits any person to enter an address and ascertain to which local jurisdiction it is assigned. Use of the single address lookup feature does not require an access code or registration.

(b) When a change to the Address/Jurisdiction Database has been approved, it is stored in an auxiliary file pending its inclusion in the next scheduled update of the database, which occurs every January 1 and July 1. The auxiliary file is maintained by the Department and contains the most recent service address local taxing jurisdictional assignment information. Dealers may use this auxiliary file to update their service address assignments between the January 1 and July 1 updates to the Address/Jurisdiction Database even though such use of this auxiliary file is not required to satisfy due diligence requirements. The individual address lookup feature searches this auxiliary file as well as the current database and may therefore reflect information that has not yet been incorporated into the database available for downloading and use by local taxing jurisdictions and communications services dealers. In such cases, the individual address lookup page carries a statement notifying the viewer that it reflects a pending change to the database.

(c) The availability and effective date of the initial database was announced in the Florida Administrative Weekly. The availability and effective date of subsequent updates are also announced in the Florida Administrative Weekly. Updates incorporate corrections of any errors discovered since the last preceding update as well as changes in addresses or jurisdictional boundaries based on information provided by local taxing jurisdictions. Each updated version of the Address/Jurisdiction Database is posted on the Department's website at least 90 days prior to the effective date of the updated version and is also available to dealers of communications services and vendors of databases in magnetic or electronic media for a fee not to exceed the cost of furnishing the updated version in such media. Requests for electronic or magnetic media copies should be addressed to: Florida Department of Revenue, Communications Services Tax, Local Government Jurisdiction Unit, Post Office Box 5885, Tallahassee, Florida 32314-5885.

(2)(a) Local taxing jurisdictions have a continuing obligation to provide the Department with information to update the Address/Jurisdiction Database, such as changes in service addresses or address ranges, annexations, incorporations, reorganizations, and any other changes to jurisdictional boundaries. Local taxing jurisdictions must inform the Department of the identity of the jurisdictions' officers or employees who are authorized to act as contact persons with the Department on database matters.

(b) Local taxing jurisdictions must submit information requesting changes to the Address/Jurisdiction Database electronically following the on-line Guide for Address Change Requests (hereby incorporated by reference). Local taxing jurisdictions that do not have access to computers with Internet access should contact the Department to request authorization to submit changes through alternative electronic media. The information must also be submitted on form DR-700022, Local Communications Services Tax Notification of Jurisdiction Change (R. 03/03, hereby incorporated by reference).

(c) The local taxing jurisdiction must specify the effective date of any information to be incorporated in the Address/Jurisdiction Database. The effective date must be the next January 1 or July 1 after the date of submission of the information to the Department. Changes must be submitted no later than the date that is 120 days prior to the January 1 or July 1 on which changes are to be effective.

(d)1. Any requested changes or additions to the Address/Jurisdiction Database must be supported by competent evidence. Competent evidence to support a change to the Address/Jurisdiction Database is documentation establishing that the service addresses affected by the requested change or addition are located in the local taxing jurisdiction indicated on the request. Examples of competent evidence include annexation ordinances, articles of

incorporation of a new municipality, or the plat filed for a newly approved subdivision.

Competent evidence must clearly designate the service addresses or address ranges that are affected.

2. If a requested change is to move an address from one local taxing jurisdiction to another, competent evidence includes the consent of the local taxing jurisdiction that did not request the change. To facilitate processing of the change, the local taxing jurisdiction requesting the change should attempt to obtain a written consent to the change signed by an authorized contact person of the non-requesting jurisdiction. Form DR-700022 contains an authorization statement that will serve as the written consent of the non-requesting local taxing jurisdiction when signed by that jurisdiction's authorized contact person. The Department will consider the receipt of a form DR-700022 containing the signatures of the authorized contact persons of both the initiating and affected jurisdictions to be sufficient competent evidence only when the form is submitted with supporting documentation that identifies the service addresses involved and includes the documentation on which the authorized contact person of the non-requesting jurisdiction relied when giving consent. Identification of the batch number associated with the address changes is insufficient by itself to demonstrate competent evidence establishing that the service addresses are located in the local taxing jurisdiction indicated on the request. If the requesting jurisdiction has not obtained the written consent of the non-requesting jurisdiction, the Department will contact the non-requesting jurisdiction before making the change. Based upon the response of the non-requesting jurisdiction, the Department will take the following action in regard to the requested change:

a. If the non-requesting jurisdiction consents in writing, the Department will accept and process the change.

b. If the non-requesting jurisdiction objects in writing, the Department will treat the requested change as one that must be resolved by the local taxing jurisdictions involved as provided in subsection (3).

c. If the non-requesting jurisdiction fails to either consent or object in writing within 20 days after the date on which the Department notified that jurisdiction of the requested change, the Department will accept and process the change. This will not preclude the non-requesting jurisdiction from subsequently objecting to the new address assignments after they have been processed.

(e) Examples.

1. A local taxing jurisdiction approves the plat and grants the permits necessary for development of a new subdivision on February 1, 2005. The plat indicates street names but no address numbers have yet been assigned. In order for the addresses to be added to the electronic database effective the following July 1, the local taxing jurisdiction must file form DR-700022 with a copy of the approved subdivision plat and submit on-line address change information by March 3, 2005. If that deadline is not met, the earliest date on which the new service addresses can be added to the database is January 1, 2006. In order to meet the deadline and be certain that the actual address numbers are included, the contact person for the local taxing jurisdiction may request the addition of a range of numbers that is certain to include the actual numbers. Because the development of the subdivision affects only the requesting jurisdiction, no consent from any other jurisdiction is required.

2. A municipality annexes an area with 1500 service addresses that was formerly in an unincorporated area of the county. The annexation will be effective July 1, 2003. The municipality's database contact person timely enters address change requests for 1525 addresses

on-line and files a form DR-700022 on February 15, 2003. Included with the form are a copy of the annexation ordinance and a map with the annexed area outlined with street address ranges included in the annexed area noted. The county database contact person has not signed the form DR-700022 or otherwise given written consent to the changes. On February 20, 2003, the Department notifies the county of the requested changes and provides copies of the municipality's form DR-700022, annexation ordinance, and map. The county does not respond with written consent or a written objection. On March 14, 2003, the Department processes the changes, and they are included in an update available on April 1, 2003, to take effect July 1, 2003. The county's database contact person notifies the Department on July 15, 2003, that the county believes the database now incorrectly assigns 25 service addresses to the municipality. The Department will handle this as an objection to the database as discussed in subsection (3).

3. A municipality annexes an area with 1500 service addresses that was formerly in an unincorporated area of the county. The annexation will be effective July 1, 2003. The municipality's contact person timely enters address change requests for the 1500 addresses on-line and writes a letter to the county's contact person requesting that consent be indicated by signing a form DR-700022 that has been prepared by the municipality and enclosed with the letter. Also enclosed with the letter is a copy of the annexation ordinance and a street map on which the annexed area is outlined. The county contact person signs the form DR-700022. The municipality submits the form and copies of the letter, annexation ordinance, and map to the Department on February 15, 2003. The Department will approve the changes and include them in the July 1, 2003 update to the Address/Jurisdiction database.

(3)(a) Any substantially affected party may object to information contained in the Address/Jurisdiction Database by submitting form DR-700025, Objection to Communications

Services Tax Electronic Database Service Address Assignment (N. 04/02, hereby incorporated by reference), along with competent evidence to support the party's objection. Local taxing jurisdictions should use form DR-700022 to create addresses in the Address/Jurisdiction Database or to request address assignment changes resulting from changes in jurisdictional boundaries. Regardless of which form is used to request changes to the Address/Jurisdiction Database, the consent of an affected jurisdiction will be required. Examples of substantially affected parties include purchasers of communications services who pay local communications services taxes, dealers who are required to collect local communications services taxes, and local taxing jurisdictions that object to a change to the Address/Jurisdiction Database proposed by another local taxing jurisdiction. Examples of competent evidence that supports an inquiry into a substantially affected party's objection include an electric utility bill from a provider that operates only within a particular local taxing jurisdiction, a voter registration card indicating the voter residing at a service address is entitled to vote in municipal elections or only in county elections, or a map that includes the boundaries of a local taxing jurisdiction and clearly places a service address inside or outside those boundaries. For example, if a map shows that a street is entirely within the boundaries of a municipality, that map is competent evidence that a service address on that street should be assigned to that municipality in the database. The Department will notify the substantially affected party of any deficiencies in the objection or competent evidence.

(b) Upon receipt of an objection on a completed form DR-700025, including competent evidence to support the objection, the Department will forward copies of the form, along with the associated documentation to the database contact person in each affected taxing jurisdiction. The Department will instruct each local taxing jurisdiction to indicate in writing its determination in

regard to the objection. If the affected local taxing jurisdictions each indicate agreement with the objection, the Department will revise the electronic database accordingly. If a local taxing jurisdiction fails to respond within a reasonable time, which shall be no less than 30 days, such jurisdiction shall be deemed to have indicated agreement with the objection. If either local taxing jurisdiction notifies the Department in writing that it does not agree with the objection, the Department will immediately assign the address with a special designation that indicates that the jurisdictional assignment of the address is in dispute. The service address will be reassigned to a local taxing jurisdiction when one of the following events occurs:

1. The Department receives written notification from the local taxing jurisdiction that did not agree with the change requested in the objection that such local taxing jurisdiction has subsequently determined that the change should be made;

2. The Department receives written notification from the party that filed the form DR-700025 that the objection was erroneous and the assignment in the database was correct; or

3. The Department is provided with a copy of a final order, judgment, or other binding written determination resolving the jurisdictional assignment of the contested address.

(c) No communications services provider who relies on the assignment of a service address in the Address/Jurisdiction Database will be held liable for any additional local communications services tax, interest, or penalty in regard to that service address if the assignment is later determined to be erroneous under this subsection. For purposes of making refunds to purchasers, a correction to the Address/Jurisdiction Database will have retroactive effect to the July 1 or January 1 on which the erroneous assignment took effect if the form DR-700025 objecting to the assignment is filed no later than the August 31 following an assignment

that took effect on July 1 or the February 28 (February 29 in a leap year) following an assignment that took effect on January 1.

(4) All forms referenced in this emergency rule may be obtained by: 1) writing the Florida Department of Revenue, Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Distribution Center at (850)922-2208; or, 3) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 4) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 5) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

This rule shall take effect on April 1, 2005.

Specific Authority 202.26(3)(b), (g), (4) FS. Law Implemented 202.22(2), 202.23 FS. History- New 4-1-05.

12BER05-3 Certification of Service Address Databases.

(1) A communications services dealer that develops and maintains its own database for assigning service addresses to local taxing jurisdictions or a third party vendor that provides a database for sale to communications services dealers or uses such a database in providing billing or other services to communications services dealers may apply to the Department for certification of the database. A database will be certified if it assigns street addresses, address ranges, post office boxes, and post office box ranges to the proper local taxing jurisdictions with an overall accuracy rate of 95 percent with a 95 percent level of confidence, based on a

statistically reliable sample. Accuracy must be measured based on the entire geographic area within the state of Florida covered by the database for which certification is sought.

(2)(a) Application for certification must be made to the Department on form DR-700012, Application for Certification of Communications Services Database (R. 07/02, hereby incorporated by reference) and in accordance with the on-line Instructions for Preparing and Submitting Customer Address Files for Certification Testing (available at the Department's website, www.myflorida.com/dor, and hereby incorporated by reference). All applicable portions of the application must be completed.

(b) The Department will notify the applicant of any errors or omissions in the application and of all additional information or documentation required within 90 days of receipt of the application. The Department will review the application and contact the individual designated in the application concerning any additional information required and the format in which such information must be submitted. The applicant shall provide access to all records, facilities, and processes reasonably required to review, inspect, or test the database within 10 working days of the Department's request for such access.

(c) The Department will test the applicant's database by comparing the assignments of service addresses to the assignments of service addresses in the Address/Jurisdiction Database, which is the Department's on-line database described in Emergency Rule 12BER05-2, F.A.C. The Department will notify the applicant of all service addresses that do not match the Department's database regardless of whether the applicant's database meets the accuracy criterion for certification.

(d) Within 180 days of receipt of a completed application, the Department will issue a written determination.

1. If the notice grants certification, it will specify the expiration date, which will be three years or four years from the date of the notice.

2. If the notice denies certification, it must specify the grounds, inform the applicant of any available remedy, and set forth procedures for protesting the denial. If the applicant cures the defects that formed the basis for denial and upon retesting the database meets the requirements for certification, the Department will issue a notice certifying the database. If the defects forming the basis of the denial are based on a sample, correction of the errors identified in the sample does not constitute correction of the database. The Department is authorized to grant certification of the database even in cases where the applicant has filed a petition and a proceeding is pending under Chapter 120, F.S.

(3) An application for recertification of a database must be submitted on form DR-700012 when the certification period expires. If an application for recertification is received prior to the stated expiration date of the certification period, the prior certification will not expire until the Department takes final action on the application for recertification. In such cases, if the Department denies recertification, the prior certification will remain in effect until the time for administrative or judicial review of the Department's denial of recertification has expired or, if later, the date fixed by order of the reviewing court.

(4) Certification or recertification of a database is effective upon the date of the Department's notice approving the application. The notice approving the application is in the form of a letter stating that the database is certified and that an application for renewal should be applied for by a specified date. Except when extended as provided under subsection (3), when a timely application for recertification has been filed, a certification or recertification is effective through the date stated on the notice, which shall be either three years or four years from the date

of the notice. The database will be assigned a three-year expiration date if the applicant's business partner number assigned by the Department's accounting system program ends in an even number and a four-year expiration date if the applicant's business partner number ends in an odd number.

(5) In determining whether a database qualifies for certification, the Department will consider whether the applicant will implement procedures designed to maintain the accuracy level required for certification throughout the certification period. If the Department obtains information indicating that a certified database is not being properly maintained and updated to insure on-going accuracy at the required levels, the Department will notify the applicant and review the operation and maintenance of that database. If the Department determines that a database no longer qualifies for certification and remedial steps are not promptly taken, the Department will revoke the certification. The Department shall first provide notice to the applicant of its intent to revoke the certification as provided in Section 120.60, F.S., and afford the applicant a point of entry under Chapter 120, F.S., to contest the notice of intent.

(6) Certification is contingent upon there being no material changes to the database or procedures for its updating and maintenance. If there are such changes, the applicant should inform the Department and request a determination whether a new form DR-700012 should be submitted. If practicable, the Department will test the effect of the changes rather than require a new certification procedure for the entire database. A material change is any change that could reasonably be expected to affect whether the database would still meet the 95 percent accuracy level required for certification. Examples of changes that could be material would be an expansion of the service area covered by a database, the merger of two or more databases, a change in the sources from which information for the database is obtained, or alteration of the

methods by which service addresses are assigned, updated, or corrected. Changes to the assignment of service addresses or address ranges that are made in the course of consistently followed procedures to obtain and incorporate accurate updates and to correct errors in assignments of service addresses as required to satisfy the due diligence standards set forth in paragraph (2)(c) of Emergency Rule 12BER05-1, F.A.C., are not material address changes that require Department review of a database.

(7) Transition Rules. Notwithstanding any provision to the contrary, if a dealer submitted an application for certification of a database on or before May 1, 2002, the following transition rules apply:

(a) The requirement of Section 202.22(3)(d), F.S., that the Department grant or deny the application within 180 days does not apply.

(b) If a notice of intent to deny the application is issued, the dealer is entitled to a collection allowance of .75 percent for taxes collected on service addresses assigned using the database that is the subject of the application until the date the Department's notice of denial is final.

(c) If the application is approved, the effective date of the certification will be the date the application was submitted.

(8) All forms referenced in this emergency rule may be obtained by: 1) writing the Florida Department of Revenue, Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Distribution Center at (850)922-2208; or, 3) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 4) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 5) downloading selected forms from the Department's Internet site at the address shown

inside the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

This rule shall take effect on April 1, 2005.

Specific Authority 202.26(3)(g), (4) FS. Law Implemented 202.22(3) FS. History-New 4-1-05.

12BER05-4 Use of Enhanced Zip Code Method to Assign Service Addresses to Local Taxing Jurisdictions.

(1) An enhanced zip code method is a method of assigning service addresses to local taxing jurisdictions based on United States postal zip codes of at least nine digits.

(2) A communications services dealer may avoid liability as provided in Emergency Rule 12BER05-1, F.A.C., for any additional local communications services tax, penalty, and interest resulting from errors in assigning service addresses to an incorrect local taxing jurisdiction when the correct local taxing jurisdiction has a higher local tax rate by employing an enhanced zip code method only if the requirements of this rule are satisfied.

(3) The dealer or the vendor providing the database is not permitted to rely solely on the location of the post office to which an enhanced zip code is assigned by the United States Postal System if the area covered by the enhanced zip code is not entirely located within the same local taxing jurisdiction as the post office. In some cases, the area included in an enhanced zip code overlaps local jurisdictional boundaries or is outside the local taxing jurisdiction where the post office to which a zip code is assigned is located. In addition, a dealer may provide services to customer service addresses for which an enhanced zip code is not available, because the service address is in a rural area or is without postal delivery. The dealer or the vendor must use a reasonable methodology that accurately assigns service addresses to the correct local taxing

jurisdictions in such circumstances. The dealer or vendor will be considered to have used a reasonable methodology if it relies on information obtained from one or more of the following sources:

- (a) The Address/Jurisdiction Database, described in Emergency Rule 12BER05-2, F.A.C.;
- (b) A database that has been certified by the Department as provided in Emergency Rule 12BER05-3, F.A.C.;
- (c) Representatives of relevant local taxing jurisdictions whose responsibilities entail knowledge of the location of addresses as within or without their jurisdictions;
- (d) The United States Census Bureau; or
- (e) The United States Post Office.

The dealer must maintain records that establish the methodology used to assign service addresses as provided in this subsection.

(4) The dealer employing an enhanced zip code method to assign service addresses to local jurisdictions must satisfy the notification and due diligence requirements set forth in paragraphs (2)(b) and (c) of Emergency Rule 12BER05-1, F.A.C. For purposes of due diligence requirements, a communications services dealer or an enhanced zip code database vendor is deemed to have expended reasonable resources to accurately and reliably implement an enhanced zip code method if the requirements of subsection (3) have been met. The due diligence requirement includes the requirement to correct errors in the assignments of service addresses within 120 days of discovering or being notified by any person of such errors. The database vendor or dealer must also maintain adequate internal controls to assure the on-going

accuracy of an enhanced zip code database as described in subparagraph (2)(c)1. of Emergency Rule 12BER05-1, F.A.C.

(5) Mobile communications services providers using an enhanced zip code method are subject to the safe harbor provisions of Title 4 U.S.C. s. 120. Such providers will be held harmless from liability for additional local communications services tax, penalty, and interest resulting from erroneous assignments of customer service addresses to local taxing jurisdictions as provided in the federal Mobile Communications Sourcing Act.

(6) In order to be entitled to the .75 percent collection allowance, a communications services dealer that employs an enhanced zip code method to assign service addresses must satisfy the requirements of subsection (3) of this rule and the requirements of subsection (3) of Emergency Rule 12BER05-1, F.A.C.

This rule shall take effect on April 1, 2005.

Specific Authority 202.26(3)(b), (f), (g), (4), 202.28(1) FS. Law Implemented 202.22(1), (4), (6), (7), 202.28(1)(b)2. FS. History-New 4-1-05.

THESE RULES TAKE EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE ARE SPECIFIED IN THESE RULES.

EFFECTIVE DATE: April 1, 2005.