THE FOLLOWING IS A WORKING DRAFT OF THE DEPARTMENT OF
REVENUE'S PROPOSED EMERGENCY RULES. IT IS NOT FINAL, NOR IS
IT TO BE CONSTRUED AS THE FINAL POSITION OF THE DEPARTMENT
OF REVENUE. THE SOLE PURPOSE FOR THESE DRAFT RULES IS TO
FACILITATE COMMENTS BY AFFECTED PERSONS THEREBY AIDING THE
DEPARTMENT OF REVENUE IN DEVELOPING FINAL EMERGENCY RULES.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>SUBJECT</th>
<th>TOPIC</th>
<th>PAGE No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>12-ER-87-1</td>
<td>SALES TAX ON SERVICES</td>
<td>1</td>
</tr>
<tr>
<td>12-ER-87-2</td>
<td>USE TAX ON SERVICES</td>
<td>2-7</td>
</tr>
<tr>
<td>12-ER-87-3</td>
<td>SERVICES SOLD FOR USE OUTSIDE THIS STATE</td>
<td></td>
</tr>
<tr>
<td>12-ER-87-4</td>
<td>REGISTRATION AND OTHER REQUIRED PERMITS</td>
<td>8-15</td>
</tr>
<tr>
<td>12-ER-87-4.1</td>
<td>SALE OF SERVICE FOR RESALE</td>
<td>16-20</td>
</tr>
<tr>
<td>12-ER-87-5</td>
<td>RETAIL SALE OR A SALE AT RETAIL</td>
<td>21</td>
</tr>
<tr>
<td>12-ER-87-6</td>
<td>COMBINED TRANSACTIONS APPLICATION OF RESALE PROVISIONS</td>
<td>22-25</td>
</tr>
<tr>
<td>12-ER-87-7</td>
<td>REGISTRATION</td>
<td>26-27</td>
</tr>
<tr>
<td>12-ER-87-8</td>
<td>REMITTANCE OF TAX; PENALTIES; INTEREST ESTIMATED TAXES; QUARTERLY FILING</td>
<td>28-34</td>
</tr>
<tr>
<td>12-ER-87-9</td>
<td>TRANSITION RULE</td>
<td>35</td>
</tr>
<tr>
<td>12-ER-87-10</td>
<td>BAD DEBTS AND RETURN PAYMENTS FOR SERVICES</td>
<td>36-37</td>
</tr>
<tr>
<td>12-ER-87-11</td>
<td>SALES BETWEEN RELATED ENTITIES</td>
<td>38-42</td>
</tr>
<tr>
<td></td>
<td>EXEMPTIONS FROM TAX ON SALE OR USE SERVICES</td>
<td>43</td>
</tr>
<tr>
<td>(1)</td>
<td>OCCASIONAL OR ISOLATED SALES</td>
<td>44</td>
</tr>
<tr>
<td>(2)</td>
<td>EMPLOYEE SERVICES</td>
<td>45-46</td>
</tr>
<tr>
<td>(3)</td>
<td>AGRICULTURAL SERVICES</td>
<td>47-50</td>
</tr>
<tr>
<td>(4)</td>
<td>TRANSPORTATION SERVICES FOR</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SPECIFIED TYPES OF CARGO</td>
<td>51-56</td>
</tr>
<tr>
<td>(5)</td>
<td>FOOD OR AGRICULTURAL BROKER SERVICES</td>
<td>57</td>
</tr>
<tr>
<td>(6)</td>
<td>FORESTRY SERVICES</td>
<td>58-59</td>
</tr>
<tr>
<td>(7)</td>
<td>EDUCATIONAL SERVICES</td>
<td>60-61</td>
</tr>
<tr>
<td>(8)</td>
<td>GOVERNMENTAL ENTITY SERVICES</td>
<td>62-63</td>
</tr>
<tr>
<td>(9)</td>
<td>FINANCIAL SERVICES</td>
<td>64-66</td>
</tr>
<tr>
<td>(10)</td>
<td>HEALTH SERVICES</td>
<td>67-68</td>
</tr>
<tr>
<td>(11)</td>
<td>INSURANCE SERVICES</td>
<td>69-73</td>
</tr>
<tr>
<td>(12)</td>
<td>INTEREST</td>
<td>74</td>
</tr>
<tr>
<td>(13)</td>
<td>COIN OPERATED LAUNDRIES</td>
<td>75</td>
</tr>
<tr>
<td>(14)</td>
<td>MAINTENANCE FEES</td>
<td>76</td>
</tr>
<tr>
<td>(15)</td>
<td>MEMBERSHIP CHARGES</td>
<td>77-79</td>
</tr>
<tr>
<td>(16)</td>
<td>MOTION PICTURE QUALIFIED PRODUCTION SERVICES</td>
<td>80-81</td>
</tr>
<tr>
<td>(17)</td>
<td>TRUCKING AND WAREHOUSING SERVICES</td>
<td>82-84</td>
</tr>
<tr>
<td>(18)</td>
<td>PASSENGER TRANSPORTATION SERVICES</td>
<td>85</td>
</tr>
<tr>
<td>(19)</td>
<td>WATER, AIR AND OTHER TRANSPORTATION SERVICES</td>
<td>86-89</td>
</tr>
<tr>
<td>(20)</td>
<td>SANITARY AND WATER SUPPLY SERVICES</td>
<td>90</td>
</tr>
<tr>
<td>(21)</td>
<td>SECURITY AND COMMODITY BROKERAGE SERVICES</td>
<td>91-93</td>
</tr>
<tr>
<td>(22)</td>
<td>SOCIAL SERVICES</td>
<td>94-96</td>
</tr>
<tr>
<td>(23)</td>
<td>COMPENSATION FOR PARTICIPATING IN ATHLETIC OR SPORTING EVENTS</td>
<td>97-99</td>
</tr>
<tr>
<td>(24)</td>
<td>REAL ESTATE COMMISSION</td>
<td>100-101</td>
</tr>
<tr>
<td>(25)</td>
<td>LEGAL SERVICES</td>
<td>102-108</td>
</tr>
<tr>
<td>(26)</td>
<td>INTERNATIONAL BANKING TRANSACTION SERVICE</td>
<td>109-110</td>
</tr>
<tr>
<td>(27)</td>
<td>TRAVEL AGENTS</td>
<td>111</td>
</tr>
<tr>
<td>(28)</td>
<td>RESEARCH AND DEVELOPMENT SERVICES</td>
<td>112</td>
</tr>
<tr>
<td>(29)</td>
<td>RELIGIOUS SERVICES</td>
<td>113</td>
</tr>
<tr>
<td>(30)</td>
<td>INTERSTATE TELECOMMUNICATION SERVICES</td>
<td>114</td>
</tr>
<tr>
<td>(31)</td>
<td>TAXICAB SERVICES</td>
<td>115</td>
</tr>
<tr>
<td>(32)</td>
<td>FRANCHISE PAYMENTS</td>
<td>116</td>
</tr>
<tr>
<td>(33)</td>
<td>DATA PROCESSING SERVICES FOR FINANCIAL INSTITUTIONS</td>
<td>117-120</td>
</tr>
<tr>
<td>(34)</td>
<td>PERSONAL LAUNDRY SERVICES SOLD TO RESIDENTS OF NURSING HOMES</td>
<td>121-122</td>
</tr>
<tr>
<td>(35)</td>
<td>INDUSTRIAL MACHINERY AND EQUIPMENT</td>
<td>123-124</td>
</tr>
<tr>
<td>(36)</td>
<td>OIL AND GAS SERVICES</td>
<td>125-126</td>
</tr>
<tr>
<td>(37)</td>
<td>RAIL TRANSPORTATION</td>
<td>127</td>
</tr>
<tr>
<td>(38)</td>
<td>BEAUTY AND BARBER SHOPS SERVICES</td>
<td>128</td>
</tr>
</tbody>
</table>
(39) EMPLOYEE LEASING SERVICES......... 129
(40) NEWS SERVICES.................. 130
(41) AMUSEMENT, RECREATIONAL, AND
CULTURAL SERVICES............. 131-137
(42) BANKRUPTCY PROCEEDINGS........ 138
(43) HOUSEHOLD UTILITY SERVICES... 139
(44) REGISTRATION FEES.............. 140
(45) SATELLITES, ETC................ 141
(46) IMPACT FEES, ETC.............. 142
(47) EMERGENCY ROAD SERVICES...... 143
(48) CONSTRUCTION SUPPORT SERVICES 144
(49) NEWSPAPER DELIVERY SERVICES.. 145
12-ER-87-13 FINANCIAL SERVICES........... 146-147
12-ER-87-14 INSURANCE SERVICES....... 148
12-ER-87-15 SECURITY AND COMMODITY BROKER SERVICES 149
12-ER-87-16 REAL ESTATE HOUSING AND BUSINESS
BROKERAGE SERVICES.............. 150-151
12-ER-87-17 LOBBYING SERVICES........ 152
12-ER-87-18 SECURITY AND DETECTIVE SERVICES 153-154
12-ER-87-12 TAXABLE SERVICES........ 155-166
12-ER-87-19 JANITORIAL AND CLEANING SERVICES 167
12-ER-87-20 FLYING SERVICE........... 168
12-ER-87-21 PERSONNEL SUPPLY SERVICES 169-170
12-ER-87-22 LANDSCAPE AND HORTICULTURAL SERVICES 171-172
12-ER-87-23 SERVICES PERFORMED OR PROVIDED BY A
GOVERNMENTAL ENTITIES........... 173-174
12-ER-87-24 WATER CONDITIONING SERVICES 175
12-ER-87-25 TREE TRIMMING AND REMOVAL SERVICES 176
12-ER-87-26 AUTOMOTIVE SERVICES...... 177
12-ER-87-27 COIN OPERATED LAUNDRIES AND COIN OPERATED
DRY CLEANERS................. 178-179
12-ER-87-28 COMMUNICATIONS SERVICES... 180-181
12-ER-87-29 COMPUTER SERVICES....... 182-183
12-ER-87-30 AMUSEMENT AND RECREATIONAL SERVICES
EXCEPT MOTION PICTURES......... 184-185
12-ER-87-31 CONSTRUCTION SERVICES.... 186-206
12-ER-87-32 ACCOUNTING SERVICES..... 207
12-ER-87-33 MEMBERSHIP ORGANIZATION 208-209
12-ER-87-34 TRANSPORTATION SERVICES.. 210-216
12-ER-87-35 SANITARY SERVICES....... 217-218
12-ER-87-36 WRECKING SERVICES....... 219
12-ER-87-37 TURKISH BATHS, MASSAGE AND REDUCING
SALONS.......................... 220
12-ER-87-38 WEIGHTING SERVICES....... 221
12-ER-87-39 TERMIT, BUG, ROACH AND PEST ERADICATORS 222
12-ER-87-40 PAINTING, PAPERING, INTERIOR DESIGNING
AND INTERIOR DECORATING SERVICES... 223
12-ER-87-41 DEBT COLLECTING SERVICES 224
12-ER-87-42 PROMOTIONAL SERVICES.... 225
12-ER-87-43 COOPERATIVE MERCHANDISING OR
ADVERTISING AGREEMENTS........ 226
12-ER-87-44 ADVERTISING MEDIA......... 227-246
12-ER-87-45 MOTION PICTURE, RADIO AND TELEVISION
BROADCASTING, ORCHESTRA, BAND, THEATREAL
AND ENTERTAINMENT SERVICES..... 247-254
12-ER-87-46 RELIGIOUS, CHARITABLE, SCIENTIFIC,
EDUCATIONAL AND VETERANS', INSTITUTIONS
AND ORGANIZATIONS; FEDERAL AND STATE
CHARTERED CREDIT UNIONS; STATE THEATER
PROGRAM FACILITIES: FLORIDA RETIRED
EDUCATORS ASSOCIATION AND ITS LOCAL
CHAPTERS; VOLUNTEER FIRE DEPARTMENTS;
ORGANIZATIONS PROVIDING SPECIAL
EDUCATIONAL, CULTURAL, RECREATIONAL,
AND SOCIAL BENEFITS TO MINORS; MILITARY
MUSEUMS; HOMES FOR THE AGED, NURSING
HOMES OR HOSPICE............... 255-259
12-ER-87-47 FILM RENTALS.............. 260
12-ER-87-48 FISHERIES................ 261
12-ER-87-49 GOVERNMENTAL UNITS..... 262-263
12-ER-87-50 NEWSPAPERS, MAGAZINES AND PERIODICALS 264-267
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12-ER-87-51</td>
<td>RADIO AND TELEVISION STATIONS</td>
<td>268</td>
</tr>
<tr>
<td>12-ER-87-52</td>
<td>ADMISSIONS</td>
<td>269-272</td>
</tr>
<tr>
<td>12-ER-87-53</td>
<td>PROFESSIONAL, INSURANCE, OR PERSONAL SERVICE TRANSACTIONS</td>
<td>273</td>
</tr>
<tr>
<td>12-ER-87-54</td>
<td>RESOURCE RECOVERY</td>
<td>274</td>
</tr>
<tr>
<td>12-ER-87-55</td>
<td>SOLAR ENERGY</td>
<td>275</td>
</tr>
<tr>
<td>12-ER-87-56</td>
<td>CHARGES BY DEALERS WHO ADJUST, APPLY, ALTER, INSTALL, MAINTAIN, REMODEL OR REPAIR TANGIBLE PERSONAL PROPERTY; INTERIOR DECORATOR CHARGES; WRECKER AND TOWING CHARGES</td>
<td>276-280</td>
</tr>
<tr>
<td>12-ER-87-57</td>
<td>MEDICAL EXEMPTIONS</td>
<td>281</td>
</tr>
<tr>
<td>12-ER-87-58</td>
<td>AIRCRAFT, BOATS, AND MOTOR VEHICLES</td>
<td>282-288</td>
</tr>
<tr>
<td>12-ER-87-59</td>
<td>SALES, INSTALLATION CHARGES</td>
<td>289</td>
</tr>
<tr>
<td>12-ER-87-60</td>
<td>FINANCE AND INTEREST CHARGES AND CARRYING CHARGES ON INSTALLMENT SALES</td>
<td>290</td>
</tr>
<tr>
<td>12-ER-87-61</td>
<td>FABRICATION OF TANGIBLE PERSONAL FOR OTHERS</td>
<td>291</td>
</tr>
<tr>
<td>12-ER-87-62</td>
<td>MONUMENTS AND TOMBSTONES</td>
<td>292</td>
</tr>
<tr>
<td>12-ER-87-63</td>
<td>SALES TO PERSONS ENGAGED IN PRINTING</td>
<td>293</td>
</tr>
<tr>
<td>12-ER-87-64</td>
<td>FUNERALS</td>
<td>294</td>
</tr>
<tr>
<td>12-ER-87-65</td>
<td>FURNITURE AND STORAGE WAREHOUSEMEN</td>
<td>295</td>
</tr>
<tr>
<td>12-ER-87-66</td>
<td>SALES OF CONTAINERS, WRAPPING AND PACKING MATERIALS AND RELATED PRODUCTS</td>
<td>296</td>
</tr>
<tr>
<td>12-ER-87-67</td>
<td>SALES BY PHOTOGRAPHERS, PHOTOFINISHER, AND PHOTOENGRAVERS AND WOOD ENGRAVERS</td>
<td>297</td>
</tr>
<tr>
<td>12-ER-87-68</td>
<td>VALET SERVICE</td>
<td>298</td>
</tr>
<tr>
<td>12-ER-87-69</td>
<td>MANUFACTURING</td>
<td>299</td>
</tr>
<tr>
<td>12-ER-87-70</td>
<td>FLORISTS</td>
<td>300</td>
</tr>
<tr>
<td>12-ER-87-71</td>
<td>SALE OF AGRICULTURAL PRODUCTS, INCLUDING POULTRY AND LIVESTOCK</td>
<td>301-303</td>
</tr>
<tr>
<td>12-ER-87-72</td>
<td>SALES TO OR BY CONTRACTORS WHO REPAIR, ALTER, IMPROVE AND CONSTRUCT REAL PROPERTY</td>
<td>304-308</td>
</tr>
<tr>
<td>12-ER-87-73</td>
<td>CEMETERY ORGANIZATIONS</td>
<td>309</td>
</tr>
<tr>
<td>12-ER-87-74</td>
<td>TRADING STAMPS</td>
<td>310</td>
</tr>
<tr>
<td>12-ER-87-75</td>
<td>INSPECTION FEES</td>
<td>311</td>
</tr>
<tr>
<td>12-ER-87-76</td>
<td>SALES IN INTERSTATE AND FOREIGN COMMERCE</td>
<td>312-313</td>
</tr>
<tr>
<td>12-ER-87-77</td>
<td>AUCTIONEERS, AGENTS, BROKERS AND FACTORS</td>
<td>314</td>
</tr>
<tr>
<td>12-ER-87-78</td>
<td>REAL PROPERTY</td>
<td>315-324</td>
</tr>
<tr>
<td>12-ER-87-79</td>
<td>RENTALS OF TANGIBLE PERSONAL PROPERTY</td>
<td>325-327</td>
</tr>
<tr>
<td>12-ER-87-80</td>
<td>ADVERTISING AGENCIES</td>
<td>328</td>
</tr>
<tr>
<td>12-ER-87-81</td>
<td>DIRECT PAY AUTHORITY</td>
<td>329-332</td>
</tr>
<tr>
<td>12-ER-87-82</td>
<td>COIN OPERATED AMUSEMENT MACHINES AND DEVICES</td>
<td>333</td>
</tr>
<tr>
<td>12-ER-87-83</td>
<td>ENTERPRISE ZONE EXEMPTIONS</td>
<td>334</td>
</tr>
<tr>
<td>12-ER-87-84</td>
<td>USE TAX</td>
<td>335</td>
</tr>
<tr>
<td>12-ER-87-85</td>
<td>MACHINERY AND EQUIPMENT USED TO INCREASE PRODUCTIVE OUTPUT</td>
<td>336</td>
</tr>
<tr>
<td>12-ER-87-86</td>
<td>MACHINERY EQUIPMENT OR SERVICES USED IN PRODUCTION OF ELECTRICAL OR STREAM ENERGY</td>
<td>337</td>
</tr>
<tr>
<td>12-ER-87-87</td>
<td>MACHINERY, EQUIPMENT, OR SERVICES USED UNDER FEDERAL PROCUREMENT CONTRACT</td>
<td>338</td>
</tr>
<tr>
<td>12-ER-87-88</td>
<td>PARTIAL EXEMPTION; FLYABLE AIRCRAFT</td>
<td>339</td>
</tr>
<tr>
<td>12-ER-87-89</td>
<td>SALE OF FOOD, DRINK AND ENTERTAINMENT BY RESTAURANTS AND OTHER EATING PLACES; GRATUITIES</td>
<td>340</td>
</tr>
</tbody>
</table>
12-ER-87-1  Sales Tax On Services.

(1) A tax is imposed on the sale at retail of any service in this state at the rate of 5 percent of the sales price of the service. The tax shall be computed on each taxable sale of a service for the purpose of remitting the amount of tax due the state, and shall include each and every retail sale of a service.

(2) The sale of a service is in this state if the service is performed wholly within this state, or if the service is performed partly within and partly outside this state but the greater proportion of the service is performed within this state, based on costs of performance.

(3)(a) "Costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the type of trade or business in which the service provider taxpayer engages.

(b) "Direct costs" is defined as those operating expenses traceable to, incurred for the sole benefit of and allocated to a specific service and which are ordinarily subject to the control of the service provider.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 7, Chapter 87-6, Laws of Florida; Section ___, Chapter 87-___, Laws of Florida; Section ___, Chapter 87-___, Laws of Florida.

History - New 7-1-87.
12-ER-87-2  Use Tax On Services.

(1)(a) A tax is imposed on the use of any service in this state when the sale of the service is at retail outside this state, at the rate of 5 percent of the cost price of the service. The use of a service is in this state, if the benefit of the service is enjoyed in this state and the purchaser of the service has tax nexus with Florida.

(b) The use tax shall be collected and remitted by the seller if he has a tax nexus with Florida and:

1. The service directly relates to real property in Florida;

2. The service directly relates to tangible personal property in this state (except for vehicles and vessels engaged in interstate or foreign commerce); or

3. The service is represented by tangible personal property which is forwarded to a natural or non-natural person in this state.

(2)(a) For purposes of determining where the benefit of the service is enjoyed, if the purchaser of the service is an individual (a natural person not conducting business), and the service does not relate to a decedent's estate (See Rule 12-ER-87-3(8)(c)), is not interstate or international transportation (See Rule 12-ER-87-34) or interstate advertising (See Rule 12-ER-87-44), the following shall apply:

1. If the service directly relates to and benefits specific real property, the benefit of the service shall be presumed to be enjoyed in the state where the real property is located; or

2. If the service is not directly related to real property, the benefit of the service shall be presumed to be enjoyed where the purchaser receives tangible personal property representing the service; or
3. If the service is not directly related to real property, or tangible personal property, the benefit of the service shall be presumed to be enjoyed in the state where the greater proportion of the service is performed, based on costs of performance.

4. However, if the purchaser can demonstrate to the satisfaction of the Department on a case by case basis that the benefit of the service was enjoyed outside this state, the service shall be deemed used or consumed outside this state. In determining whether the benefit of a service is enjoyed in this state the Department shall consider whether the result of the service could give rise to a cause of action in Florida under s. 48.193, F.S.

(b) For purposes of determining where the benefit of the service is enjoyed, if the purchaser is a business, and the service is not interstate or international transportation or advertising, the following shall apply:

1. If the service directly relates to and benefits specific real property, the benefit of the service shall be presumed to be enjoyed in the state where the real property is located; or

2. If the service directly relates to and benefits specific tangible personal property, the benefit of the service shall be presumed to be enjoyed in the state where the property has acquired a business situs if the property has acquired such situs; or

3. If the service directly involves sales to a local market of the purchaser of the service, the benefit of the service shall be presumed to be enjoyed in the state where the purchaser’s local market exists; or

4. If subparagraphs 1., 2., and 3. of this paragraph are not applicable, and the purchaser of the service is doing business in this state and outside of Florida in one or more other states, the service shall be presumed to be enjoyed in Florida this state to the extent
that the purchaser is doing business in Florida this state.

In the case of an affiliated group, the affiliated group
shall be considered the purchaser for purposes of this
subparagraph. For purposes of determining the extent to
which the purchaser is doing business in this state, an
apportionment formula shall be utilized.

a. The apportioned sales or use tax base to which this
paragraph applies shall be determined by multiplying the
entire sales or cost price of the service by a fraction
which is the sum of the Florida property, payroll, and sales
factors which have been weighted as outlined in
sub-subparagraph b below. The determination of the sale,
property and payroll factors shall be in accordance with ss.
214.71, 214.72, 214.73, F.S.; The calculation of the
apportionment formula for an affiliated group will include
the property, payroll, and sales of all members of the
affiliated group as defined in s. 212.02(2), F.S., excluding
members which a taxpayer has properly elected to exclude
from the group pursuant to s. 212.02(2), F.S., and rule
12ER-87-10(2), F.A.C. The apportionment fraction
applied to transactions occurring during the purchaser’s tax
year shall be calculated with payroll, property and sales
data representing the most recent tax year for which the
purchaser has filed a Florida or federal income tax return
prior to the beginning of the current tax year. Since
payments made on ordinary tax returns (DR-15) filed during
the current year represent historic apportionment data
applied to current taxable transactions, these payments
shall operate as estimated or tentative payments in the
context of Chapter 214 apportionment provisions. A
reconciliation is therefore necessary after the close of the
current year once apportionment data is available for said
year. On or before the due date including any extension
granted by Department of Revenue for filing a Florida or
federal income tax return for the current year, the taxpayer
shall file a Supplementary Sales Tax Return for Exempt Purchase Permit Holders (DR-15SUP), dated July, 1987, which is hereby incorporated in this rule and made part of this rule by reference. The Supplementary Sales Tax Return for Exempt Purchase Permit Holder (DR-15SUP) is available, without cost, upon written request directed to the Department of Revenue Supply Section, Tallahassee, Florida 32399-0100. The supplementary return shall summarize taxable purchases of services and shall show recalculated tax liabilities for apportionable services purchased during said year utilizing payroll, property and sales data for said year. These liabilities shall operate as final payments in the context of the Chapter 214 apportionment provisions. If the recalculated liabilities are greater than the amounts shown on the original tax returns, the taxpayer shall remit the difference. If the recalculated liabilities are less, the taxpayer may claim an equivalent credit on his subsequent sales tax return or apply for a refund.

b. The weighted three-factor apportionment fraction shall be calculated as the sum of the sales factor multiplied by 50 percent, plus the property factor multiplied by 25 percent, plus the payroll factor multiplied by 25 percent.

Example: Corporation is a small loan company having 75 offices in Florida and 150 additional offices in Georgia and South Carolina. Corporation B purchases computer services from a company doing business exclusively in Georgia.

The prior years sales, payroll, and property of corporation B was as follows:

(Florida) $25,000,000 x .50 = .192308
Sales: (Everywhere) $65,000,000

Payroll: (Florida) $600,000 x .25 = .100000
(Everywhere) $1,500,000
Property: (Florida) $3,500,000 \times 0.25 = 0.87500
(Everywhere)$10,000,000

Total Apportionment Fraction: 0.379808

The charge made to corporation B for
the computer services was: $8,450.00

The Apportioned Tax Base is: $3,209.38

Florida Use Tax Payment is: $160.47

(Note: A subsequent adjustment may be necessary when the
apportionment factor, for the current year is calculated.)

c. In the event the property or payroll factor has a
denominator which is zero or is determined by the department
to be insignificant, the weighting percentage for the sales
factor shall be 67% of the apportionment and the weighting
percentage for the other non-zero or significant factor
shall be 33%. Similar adjustment shall be made for other
insignificant denominators.

d. The term "everywhere" which is used in the
computation of apportionment factor denominators, means in
all states of the United States, the District of Columbia,
the Commonwealth of Puerto Rico, any territory or possession
of the United States, and any foreign country, or any
political subdivision of the foregoing.

e. If the purchaser of a service is a new business,
and the apportionment formulas are unknown, an estimate will
be acceptable for the period for which the apportionment
formulas remain unknown. The estimate shall be based upon a
reasonable calculation utilizing sales, property, and
payroll (except insurance companies). This estimate shall
be applied each month to the total services. Upon
determination of known apportionment factors a correction is
required for purposes of any overpayment or underpayment of
tax.

5. If the provisions of subparagraphs 1., 2., 3., and 4. of this paragraph are not applicable, the benefit of the service shall be presumed to be enjoyed in the state where the purchaser is exclusively doing business.

6. However, if the purchaser can demonstrate to the satisfaction of the department on a case by case basis that the benefit of the service was enjoyed outside Florida in another state, the service shall be deemed used or consumed outside Florida in that state. In determining whether the benefit of a service is enjoyed in this state the Department shall consider whether the result of the service could give rise to a cause of action in Florida under s. 48.193, F.S.

(c) Interstate and international transportation services shall be presumed to be enjoyed in this state to the extent of the provisions of s. 212.059(5), F.S.

(d) Advertising services shall be presumed to be enjoyed in this state to the extent of the provisions of s. 212.0595(3) and (4).

(e) The benefit of a service performed for the estate of a decedent is presumed to be enjoyed in the state in which the decedent last established residency. Residency for purposes of this subsection means the place where the decedent last established domicile pursuant to s. 198.015, F.S. (1985).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 2, Chapter 87-6, Laws of Florida and Section __, Chapter 87--. Laws of Florida.

History - New 7-1-87.
12-ER-87-3 Services Sold for Use Outside this State:

Registration and Other Required Permits.

(1) Services sold in this state for use outside of this state are exempt. Services are sold for use outside of this state when the benefit of the service is enjoyed outside this state. For the purpose of determining where the benefit of the services is enjoyed, the provisions of Rule 12-ER-87-2(2) shall apply.

(2)(a) In order to claim the exemption on services sold in this state for use outside this state under Rule 12-ER-87-3(1), F.A.C., any business or group of businesses without tax nexus in this state, and any individual resident in another state, prior to claiming the exemption under Rule 12-ER-87-3(1), F.A.C., must obtain from the Department of Revenue an Exempt Service Purchase Permit (DR-11P) or an Exempt Individual Service Purchase Permit for Out of State Businesses and Persons (DR-14P), dated July 1, 1987, which is hereby incorporated in this rule and made part of this rule by reference, and consent to be subject to the jurisdiction of this state solely for the purpose of enforcement of the sales tax on services, or shall execute and present to the selling dealer at the time of sale an Exempt Service Purchase Affidavit (DR-14A) dated July 1, 1987, which is hereby incorporated in this rule and made a part of this rule by reference and reproduced. The Exempt Service Purchase Affidavit is available without cost, upon written request directed to the Department of Revenue, Supply Section, Tallahassee, Florida 32399-0100 ascribed in paragraph (e).

(b) To procure an Exempt Service Purchase Permit for Out of State Businesses and Persons (DR-14P++) for a business or group of businesses without tax nexus in this state, must file with the Department an Application for Exempt Service Purchase Permit for Out of State Businesses.
and Persons and/or Service-Resale Permit (DR-1EP), dated
July, 1987, which is hereby incorporated in this rule and
made part of the rule by reference, or an Application for
The effective date of the Exempt Service Purchase Permit for
Out of State Businesses and Persons (DR-14P) shall be the
postmark date of the Application for Exempt Permit
for Out of State Businesses and Persons (DR-1EP), or
Application for Sales and Use Tax Registration (DR-1),
revised July, 1987, and/or Service-Resale Permit if mailed,
or the date received by the Department, if delivered by
means other than mail. Applications for Exempt Service
Purchase Permits (DR-1EP) Application for Sales and Use Tax
Registration (DR-1), revised July, 1987, and Exempt Service
Purchase Permit for Out-of-State Business and Persons
(DR-14P) are available, without cost, upon written request
directed to the Department of Revenue, Supply Section,
Tallahassee, Florida 32399-0100.

(c) To procure an Exempt Individual Service Purchase
Permit for Out of State Businesses and Residents (DR-14P),
an individual resident of another state must file with the
Department an Application for Exempt Service Purchase Permit
(DR-1EP), or an Application for Sales and Use Tax
Registration (DR-1) revised July, 1987, dated July 1, 1987,
which is hereby incorporated in this rule and made part of
the rule by reference. The effective date of the Exempt
Individual Service Purchase Permit for Out of State
Businesses and Persons (DR-14P) shall be the postmark date
of the Application for Exempt Service Purchase Permit
(DR-1EP) or an Application for Sales and Use Tax
Registration (DR-1) revised July, 1987 if mailed, or the
date received by the Department if delivered by means other
than mail. Applications for Exempt Service Purchase Permits
(DR-1EP), or an Application for Sales and Use Tax
Registration (DR-1) revised July, 1987 are available.
without cost, upon written request directed to the
Department of Revenue, Supply Section, Tallahassee, Florida
32399-0100.

(d) Acceptance of a valid Exempt Service Purchase
Permit for Out of State Businesses and Persons
(DR-14PPIT), or Exempt Individual Service Purchase
Permit (DR-14PP), or Exempt Service Purchase Affidavit
ascribed in paragraph (e) shall absolve the selling dealer
from the responsibility of collecting any sales tax which
may be due on the service.

(e) The following is a mandatory suggested affidavit to
be completed by a business or group of businesses without
tax nexus in this state and an individual resident of
another state claiming exemption under section 212.0592(1),
F.S., as provided in Rule 12-ER-87-3(2)(a).

EXEMPT SERVICE PURCHASE AFFIDAVIT

Affidavit for claiming an exemption under services.
212.0592(1), F.S.

Section 1. To Be Completed By The Seller:

Selling dealers sales tax number: __________
Name of selling dealer:
Address of selling dealer:
City, state and zip
Type of service sold:
Price of the service sold for
which exemption is claimed:

Section 2. To Be Completed In The Case Of A Business Without
A Tax Nexus In Florida, Purchasing Services To Be Used
Outside Of Florida.
Name of Business

Federal Employee Identification Number or Social Security Number

Name of Owner, Officer or Director (Same As Person Making Affidavit)

Business Location Address

Business Mailing Address

City State Zip

City State Zip

1. the undersigned authority, hereby certify as follows:

1. The business that I represent is purchasing said services for use outside of the State of Florida.

2. The business that I represent does not have a tax nexus in the State of Florida.

3. The business that I represent does consent to be subject to the jurisdiction of the State of Florida solely for the purpose of enforcement of sales tax on services imposed pursuant to Chapter 212 of the Florida Statutes.

Section 3. To Be Completed By A Resident Of Another State, Purchasing Services To Be Used Outside Of Florida.

Name of Individual

(Same as Person Making Affidavit)

Social Security Number
Residence Location Address              Telephone Number

                                        
Residence Residence                   
City   State   Zip

I, the undersigned individual, hereby certify as follows:

1. I am purchasing said services for use outside of the
   State of Florida.

2. I am not a resident of the State of Florida.

3. I consent to be subject to the jurisdiction of the State
   of Florida solely for the purpose of enforcement of
   sales tax on services imposed pursuant to Chapter 212 of
   the Florida Statutes.

---------------------------------------------

Section 4.
Under the penalties of perjury, I declare that I have read
the foregoing, and the facts alleged are true to the best of
my knowledge and belief.

                                      Signature of person executing
                                      the affidavit

                                      Date

Sworn to and subscribed before me this _____ day of _____,
   19___.

                                      (Notary Public for Florida)
(3)(a) In order to claim the exemption for services sold in this state for use outside this state under s. 212.0592(1), F.S., each multistate business having tax nexus in this state, prior to claiming the exemption, must obtain from the Department an Exempt Service Purchase Permit, (DR-1IT), dated July 1, 1987, which is hereby incorporated in this rule and made part of the rule by reference, prior to claiming the exemption. The Exempt Service Purchase Permit (DR-1IT) shall be used by a multi-state business having tax nexus in this state when purchasing any service sold in this state except interstate and international transportation or advertising, regardless of whether the service is used in this state.

(b) To procure an Exempt Service Purchase Permit (DR-1IT), the multistate business having nexus in this state must file with the Department an Application for Exempt Purchase Permit and/or Service Resale Permit (DR-1EP), dated July, 1987, which is hereby incorporated in this rule and made part of the rule by reference or an Application for Sales and Use Tax Registration (DR-1) revised July, 1987.

The effective date of the Exempt Service Purchase Permit (DR-1IT) shall be the postmark date of the Application for Exempt Purchase Permit and/or Service Resale Permit (DR-1EP) or an Application for Sales and Use Tax Registration (DR-1) revised July, 1987, if mailed, or the date received by the Department, if delivered by means other than mail.

Applications for Exempt Service Purchase Permits (DR-1EP) and Application for Sales and Use Tax Registration (DR-1) revised July, 1987, are available, without cost, upon written request directed to the Department of Revenue, Supply Section, Tallahassee, Florida 32399-0100.

(c) Upon purchasing any service except interstate and international transportation or advertising from a dealer registered with the Department, presentation by the multistate business having nexus with this state of a valid
Exempt Service Purchase Permit, (DR-11T), shall absolve the
selling dealer from the responsibility of collecting sales tax which may be due on the service. The multistate
business shall self-accrue any taxes which are due on services used in this state and remit the tax to the Department in the manner and under the requirements applicable to dealers under the provisions of Part I of Chapter 212, P.S.

(4)(a) If a purchaser fails to obtain an Exempt Service Purchase Permit (DR-11T), Exempt Individual Service Purchase Permit for Out of State Businesses and Persons (DR-14P) or execute an Exempt Service Purchase Affidavit (DR-14A) but otherwise qualifies for an exemption, the purchaser may apply to the Department for a refund of taxes paid on the exempt amount of the purchase.

(b) To receive a refund of tax authorized pursuant to Rule 12-ER-87-3(4)(a), F.A.C., the purchaser of the service for which the refund is sought must:

1. File an Application for Refund from the State of Florida (DR-26);
2. Execute an Exempt Service Purchase Affidavit (DR-14A) described in paragraph (e) of subsection (2), which shall be attached to the Application for Refund; and
3. Attach a copy of the sales invoice, executed by the seller of the service, to the Application for Refund, which invoice shall contain the following information:
   a. The name and address of the purchaser;
   b. A description of the service rendered;
   c. The date on which the purchase was made;
   d. The price and amount of Florida sales tax paid for said service; and
   e. The name and place of business of the provider of the service.

(c) The Application for Refund shall be submitted
within 1 year of the purchaser's payment of the tax for
which the refund is sought.

(d) The refund amount recommended by the Department
shall be 97 percent of the first $1,000 of Florida tax paid
on the exempt amount of the purchase and 99 percent of the
all amounts in excess of $1,000.

(e) Applications for Refund from the State of Florida
(DR-26) are available, without cost, upon written request
directed to the Department of Revenue, Supply Section,
Tallahassee, Florida 32399-0100.

(5) Each selling dealer shall maintain a monthly log
showing each transaction for which sales tax was not
collected because of the presentation of an Exempt Service
Purchase Permit (DR-11T), an Exempt Individual Service
Purchase Permit for Out of State Businesses and Persons
(DR-14P), or an Exempt Service Purchase Affidavit. The log
shall identify the name and address of the purchaser, the
exempt purchase permit number if applicable, the description
of service sold, the sales invoice number, the basis for the
exemption, the date on which the sale was made, and the
price of the service. The logs and all Exempt Service
Purchase Affidavits (DR-14A) described in paragraph (e) of
subsection (2) accepted by the dealer shall be retained by
the dealer for 5 years and made available to the department
upon request. Failure to maintain these records or to make
them available to the department shall subject the dealer to
a $100 mandatory penalty, the penalties provided in s.
312.19, F.S.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections 2, 3, 4, and 18, Chapter 87-6, Laws
of Florida.
History - New 7-1-87.
12-ER-87-4  Sale of Service for Resale.

(1) A sale of a service, except for construction
services, shall be considered a sale for resale only if:

(a) The purchaser of the service does not use or
consume the service, but acts as a broker or intermediary in
procuring a service for his client or customer;

(b) The purchaser of the service buys the service
pursuant to a written contract with the seller and such
contract identifies the client or customer for whom the
purchaser is buying the service;

(c) The purchaser of the service separately states the
value of the service purchased at the purchase price in his
charge for the service on its subsequent sale;

(d) The service, with its value separately stated, will
be taxed under this part in a subsequent sale, unless the
service is exempt pursuant to s. 212.0592(1) as a sale of a
service in this state for use outside this state; and

(e) The service is purchased pursuant to a service
Resale Permit (DR-11T), dated July 4, 1987, hereby
incorporated and made part of this rule by reference, by a
person who is primarily engaged in the business of selling
services.

Example #1: Courier services purchased by a law firm would
be taxable because they are consumed by a law firm in
performing its services for its client. The fact that such
services might be separately stated on the law firm's bill
to its client would not transform such services into those
that are "resold" to the client. The law firm uses or
consumes the courier services in the performance of the law
firm's duties to its client, delivery of legal services in a
timely fashion.

Example #2: Spotless Cleaners is asked to remove a spot on
a suede coat. It has no equipment to clean suede so it
sends the coat to Acme Cleaners which has such equipment.
Spotless is not required to pay the tax to Acme since
Spotless is not using or consuming Acme's services, but is
merely acting as broker. When Spotless bills the coat
owner, Spotless must charge the tax on the full amount of
its bill to coat owner, including any mark-up of Spotless's
costs.

Example #3: Environmentalist asks Lawyer to get court
reporter to transcribe a hearing on an environmental matter
held several months earlier. Environmentalist believes the
hearing was improperly conducted and wishes to find out for
himself. Lawyer may extend a service resale permit to court
reporter and purchase the transcript tax free since he is
not using court reporter's services, but merely brokering
them. Lawyer must however charge the tax on the full amount
of his bill to environmentalist including any mark-up of
Lawyer's costs.

Example #4: In the example in #3 above, several days later,
after reading the transcript, Environmentalist retains
Lawyer to challenge permit issued as a result of the
hearing. Lawyer later learns of an additional hearing on
the matter. Lawyer has the second hearing transcribed
and determines that the permit was lawfully issued and so
advises Environmentalist. Here Lawyer uses Court Reporter's
services and therefore must pay the tax to Court Reporter.

When Lawyer bills Environmentalist with the cost of
Reporter's services included, Environmentalist must pay the
tax on Lawyer's full charge, including Lawyer's costs (the
amount Lawyer paid to Reporter).

Example #5: Speculator asks Lawyer to do a title search on
some land. Lawyer doesn't do title searches but indicates
he can get Title Company to do one. Lawyer does not
guarantee title work, offer title opinion, or otherwise
represent to Speculator that Lawyer warrants titles. Lawyer
may buy the title search for the Speculator tax free so long
as lawyer charges Speculator the tax on Lawyer's full
charge, including costs.
Example #6: In the example in #5 above, Speculator asks
Lawyer to give title opinion. Again, Lawyer does not search
titles but does issue opinions based on title searches.
Here, since Lawyer uses title search to render his opinion,
Lawyer must pay tax when he purchases the title search and
Speculator must pay a tax on Lawyer's full charge, including
Lawyer's costs (the amount Lawyer paid to Title Company).

(2) Service Resale Permits (DR-11T) shall be issued by
the Department to any person who is primarily engaged in the
business of selling services upon such person filing with
the Department an Application for Certificate of
Registration (DR-1), incorporated by reference in Rule
12A-1.097(1), F.A.C., (See 12-ER-87-6). Applications for
Certificate of Registration (DR-1) are available, without
cost, upon written request directed to the Department of
Revenue, Supply Section, Tallahassee, Florida 32399-0100.
Upon formal approval of the completed application, the
Department shall issue a Service Resale Permit (DR-11T).
The effective date of the Service Resale Permit (DR-11T)
shall be the postmark date of the Application for
Certificate of Registration (DR-1), if mailed, or the date
received by the Department, if delivered by means other than
mail. The purchase of a service for resale shall not be
authorized for purchases made prior to the effective date of
the Service Resale Permit (DR-11T). Every dealer, who is
primarily engaged in the business of selling services, must
renew his Service Resale Permit (DR-11T) every five (5)
years from the effective date of such permit. The
Department shall review each renewal request to ensure that
the dealer is still engaged in the business of selling
services.

(3)(a) When a sale of a service is made to a person who
claims to be entitled to purchase services for resale, the
seller of the service being a duly registered dealer
pursuant to Part I of Chapter 212, F.S., shall obtain from
the purchaser of the service a service resale certificate.
The resale certificate, executed by the purchaser of the
service, shall contain a statement to the effect that the
service is being purchased exclusively for resale pursuant
to s. 212.02(19), F.S., as amended by section 7 of Chapter
87-6, Laws of Florida and the statement shall include the
following information:

1. The name of the person selling the service;
2. The purchaser's Service Resale Permit Number;
3. The effective date of the purchaser's Service
Resale Permit;
4. The date on which the purchase was made;
5. The purchaser's name and address;
6. A description of the service purchased;
7. The sales price of the service purchased;
8. The signature of the person executing the
statement; and
9. The date of execution of the statement.

(b) The following is a suggested service resale
certificate form to be completed by the purchaser and
presented to the seller. This certificate is to continue in
force until revoked by written notice to the supplier and
the Department of Revenue.

SUGGESTED BLANKET SERVICE RESALE CERTIFICATE

This is to certify that the service described below
purchased from __________________________ (name of selling dealer) is
purchased exclusively for resale pursuant to s. 212.02(19),
F.S., as amended by section 7 of Chapter 87-6, Laws of
Florida.

Date of Purchase __________________________

Description of service purchased __________________________

Sales price of the service purchased $ __________
Purchaser's Name

Purchaser's Address

Purchaser's Service Resale Permit No.

Expiration Date of Registration as a Service Provider

Effective Date of Resale Service Permit

By

(Signature)

Date Signed

(c) Any dealer who makes a sale for resale of a service which is not in compliance with the provisions of this subsection shall himself be liable for and pay the tax.

(d) Any person who fraudulently issues to any dealer or agent of the State a service resale certificate or statement in writing for the purpose of evading payment of sales tax, in addition to being liable for payment of the sales tax, plus a mandatory penalty of 100% of the tax, shall also be liable for fine and punishment as provided by law for conviction of a misdemeanor of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

(4) Notwithstanding the provisions of subsection (1), a sale of telecommunication services to other than an end user consisting of a right of access for which an access charge, as defined in s. 203.012(1), F.S., is imposed, is a sale for resale.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 212.07(1)(b), 212.085 FS.; Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-4.1 "Retail Sale" or a "Sale at Retail"

(1) The terms: "retail sale", "sale at retail", "use", "storage", and "consumption", do not include the following:

(a) Fee-sharing for services described in s. 475.011, F.S. (1986 Supplement) by persons licensed under Chapter 475 between real estate agents and real estate brokers when said fees were earned solely for the services listed in 475.01(c) F.S. If the fee is received in a lump sum and includes remuneration for services not listed in said statute, a portion of the lump sum representing the nonlisted services should be separately, stated from the lump sum and regarded as taxable unless otherwise exempt.

(b) The materials, containers, labels, sacks, or bags intended to be used one time only for packaging tangible personal property for sale even if the packaging occurs in providing a service taxable under this part.
12-ER-87-5  Combined Transactions - Application of Resale Provisions.--

(1)(a) If a transaction involves both the sale or use of a taxable service and the sale or use of intangible or real property which is not subject to tax, the charges shall be separately identified and stated with respect to the taxable and nontaxable portions of the transaction. The tax shall apply to the transaction to the extent that the consideration paid in connection with the transaction is payment for the sale or use of services. Failure to separately state the charges shall create a presumption that the entire transaction is taxable.

(b) If a transaction involves both the sale or use of a taxable service and the sale or use of an exempt service, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption. However, the provisions of this paragraph shall not apply to services sold in this state for use outside this state.

(2)(a) The purchase of services to alter, remodel, maintain, adjust, or repair tangible personal property of the type which is normally sold in the regular course of the retailer's business is subject to tax. The purchase of tangible personal property which becomes an ingredient or component part of the altered, remodeled, maintained, adjusted, or repaired item may be purchased for resale tax exempt, except for tangible personal property physically incorporated into improvements to realty through new construction, additions to existing improvements or repairs to existing improvements.

(b) EXAMPLE: C owns a retail appliance store and contracts with D to repair a refrigerator that C is going to resell. D uses no parts in repairing the refrigerator. C
cannot purchase the repair service tax exempt from D.

(c) EXAMPLE: F owns a retail appliance store and contracts with G to repair a stove that F is going to resell. G uses parts and labor to repair the stove. The labor charge is capable of being separately billed and calculated, as is the cost of the parts. F cannot purchase the repair service from G tax exempt. The tangible personal property may be purchased tax exempt for resale provided a valid resale certificate is issued in lieu of tax at the time of sale.

3. Tangible personal property purchased by a person who is engaged in the business of performing or providing a service is purchased for resale and not subject to tax at the time of purchase when:

(a) The purchaser extends a valid resale certificate to the dealer at the time of sale;

(b) The property is transferred to the customer in conjunction with the performance of the service in a form and quantity to which a fixed or definite sales price can be ascribed and in a form and quantity typically associated with sales of such property; and

(c) The property is actually sold to the customer in conjunction with the performance of the service as indicated by a separate charge for the specifically described and identifiable items.

1. EXAMPLE: A television repairman may purchase television tubes for resale tax exempt where the repairman makes a separate charge for the tube to the customer, since the tube is transferred to the customer in a form or quantity capable of a fixed or definite sales price.

2. EXAMPLE: A person engaged in lawn mowing service may purchase fertilizer for resale tax exempt where the person makes a separate charge for the fertilizer to the consumer, since the fertilizer is transferred to the customer in a form or quantity capable of a fixed or
definite sales price.

(4) Tangible personal property which is not sold in the
manner set forth in subsection (3) is not purchased for
resale and is subject to tax at the time of purchase by a
person engaged in the performance of a service. Such
tangible personal property is considered to be consumed by
the person who is engaged in the performance of a service.
The subsequent sale of service is subject to tax on the
entire sales price, even though the previously taxed
tangible personal property is included in the transaction.

(a) EXAMPLE: A car wash company purchases electricity,
gas, soaps, and solvents to use in washing cars. The car
wash company would be the consumer of the electricity, gas,
soap and solvents and tax is due at the time of purchase.
The items purchased by the car wash company are not
transferred to the customer in a form or quantity capable of
a fixed or definite sales price, nor in a quantity typically
associated with sales of soap, solvents, etc., and the
customer is not separately billed for the items.

(b) EXAMPLE: A law firm purchases word processing
equipment, paper, ribbons and other supplies for use in
providing or performing its services. The law firm would be
the consumer of the word processing equipment, paper,
ribbons and supplies it uses. Such tangible personal
property is considered to be consumed by the law firm. It
is not transferred to the customer in the same form or
quantity as purchased by the law firm.

(5) Materials, containers, labels, sacks or bags
intended to be used one time only exclusively for packaging
materials in the process of providing a taxable service are
exempt, provided such items accompany the service product to
the final buyer without which delivery of the services
product is impracticable on account of the character of the
contents and for which there is no separate charge.

(a) EXAMPLE: A dry cleaner purchases plastic bags and
hangers. These bags and hangers are placed on the items
cleaned and are given to the customer. These plastic bags
and hangers would not be subject to tax at the time of
purchase by the dry cleaner, provided they are used one time
only and such items are transferred to the customer in
conjunction with the performance of the service.

(b) EXAMPLE: A sanitary service provider purchases
plastic bags. These plastic bags are given to the customer
for garbage and refuse collection and disposal. These
plastic bags would not be subject to tax at the time of
purchase by the provider sanitary service, provided they are
intended to be used one time only and are transferred to the
customer in conjunction with the performance of the
service.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections 2 and 7, Chapter 87-6, Laws of
Florida.
History - New 7-1-87.
Registration.

(1)(a) Every person desiring to engage in the business of selling, providing, or performing a service in this state that is subject to the tax on the sale or use of services shall file with the Department an Application for Certificate of Registration (DR-1), incorporated by reference in Rule 12A-1.097(1), F.A.C. A separate Application for Registration (DR-1) shall be filed for each place of business or location. Each application shall be made to the Department before the service provider may engage in business, and shall be accompanied by a registration fee of $5.00. The Department, upon receipt of such application will grant to the applicant a separate Certificate of Registration (DR-1)T) for each place of business. Engaging in the business of selling of services without first obtaining a Certificate of Registration (DR-1)T) or after such certificate has been canceled by the Department is prohibited. The failure or refusal of any person to register as a dealer is a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S., or subject to injunctive proceeding as provided by law.

(b) No person selling, providing, or performing a taxable service in Florida shall be issued any license from any authority within the State of Florida to engage in business unless such person is the holder of a valid Certificate of Registration (DR-1)T).

(c) Applications for Registration (DR-1) are available, without cost, upon written request directed to the Department of Revenue, Supply Section, Tallahassee, Florida 32399-0100.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Section 21, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-7 Remittance of Tax; Penalties; Interest; Estimated Taxes; Quarterly Filing.

(1) The service provider shall charge, collect and remit the sales and use tax on services except as provided in Rule 12-ER-87-2(1)(b). If a service is used in Florida and the service provider fails to collect and remit the tax, the purchaser of the service shall remit the use tax on services.

(2) The provisions of this section shall not apply to construction services or advertising services.

(3) Multistate businesses are not required to collect the use tax on services they sell.

see 12-ER-87-2, 12-ER-87-8 and 12-ER-87-16.

(29)(a) The sales and use tax on services is in addition to the total amount of the consideration for services, including all other fees and taxes levied, and shall be separately stated as Florida tax on any charge ticket, sales slip, invoice or other tangible evidence of sale. However, where it is impractical, due to the nature of the business practice within an industry, to separately state the tax, the Department may establish an effective tax rate for such industry.

(b) Notwithstanding the rate of tax imposed upon the sale or use of services, the following brackets shall be applicable to all taxable service transactions:

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

2. On single sales in amounts from 10 cents to 20 cents, both inclusive, 1 cent shall be added for taxes;

3. On sales in amounts from 21 cents to 40 cents, both inclusive, 2 cents shall be added for taxes;

4. On sales in amounts from 41 cents to 60 cents, both inclusive, 3 cents shall be added for taxes;
5. On sales in amounts from 61 cents to 80 cents, both inclusive, 4 cents shall be added for taxes;

6. On sales in amounts from 81 cents to $1, both inclusive, 5 cents shall be added for taxes; and

7. On sales in amounts of more than $1, 5 percent shall be charged upon each dollar of price plus the above bracket charges upon any fractional part of a dollar.

(c) The sales and use tax on services shall be due and payable at the time of the sale or use of the service unless the dealer service provider, who is a person primarily engaged in the business of selling services other than a provider of construction services, elects to ascertain the amount of tax payable on the basis of tax receipts on all taxable service transactions. The tax on a service at the time consideration is paid for such service and on the amount of consideration paid. If such election is made, it shall be applicable to all taxable service transactions of such dealer. This election is available only to businesses which are primarily providers of services.

1. A dealer service provider, who is a person primarily engaged in the business of selling services electing to ascertain the amount of tax payable on the basis of tax receipts on all taxable service transactions shall make his election request in writing setting out the trade name of his business, mailing address, the dealer's certificate of registration number assigned by the Department, the effective month of the election walked the reason the election is requested. The request must be addressed to the Department of Revenue, Carlton Building, Tallahassee, Florida 32399-0100. All requests must be received by the Department before the tax return for which the election is made becomes delinquent. Alternatively, the election may be made by completing the relevant portion of
DR-1EP. If such election is made, it shall be applicable to all taxable service transactions of such dealer for a minimum of 12 consecutive months. Every dealer, who is a person primarily engaged in the business of selling services, electing to ascertain the amount of tax payable on the basis of tax receipts shall renew such election every five (5) years from the date of the initial election. The department will review each election renewal to ensure that the dealer is still primarily engaged in the business of selling services.

2. A dealer service provider, who is a person primarily engaged in the business of selling services making an election to ascertain the amount of tax payable on the basis of tax receipts on all taxable service transactions remit the tax on a service at the time the consideration is paid for a service and on the amount of the consideration paid may change his election and remit the tax on an accrual basis by a written request setting out the trade name of the business, mailing address, the dealer's certificate of registration number assigned by the Department, and the effective month of the election change and the reason the election change is requested. The request must be addressed to the Department of Revenue, Carlton Building, Tallahassee, Florida 32399-0100. All requests must be received by the Department before the tax return for which the change in election is made becomes delinquent. If such election to change is made, it shall be applicable to all taxable service transactions of such dealer for a minimum of 12 consecutive months.

(34) If a transaction involves both the sale or use of services and the sale or use of tangible personal property, and the tangible personal property is not an inconsequential element of the transaction, the sales and use tax on services shall be due and payable at the time of the sale or use regardless of the time consideration is paid for such
services, and the provisions of (2)(c) shall not be applicable.

(49) All taxes shall for each month be due the Department on the first day of the month following the date of sale or transaction and shall be delinquent on the twenty-first day of each month; however, when a service provider elects to remit the tax on a service at the time consideration is paid for services and on the amount of consideration, such taxes shall for each month be due the Department on the first day of the month following the date the consideration for the service is paid and shall be delinquent on the twenty-first day of each month. Taxes due in any given month must either reach the office of the Department or be postmarked on or before the 20th day of the month following the date of sale, or of the month following the date the consideration for the service is paid the service provider if the election is made to remit tax in such a manner, to be entitled to the collection allowance and to avoid penalty and interest for late filing. In those cases where the 20th day falls on Saturday, Sunday or a federal or state legal holiday, returns shall be accepted as timely filed if postmarked or delivered to the Department on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, a legal holiday shall mean holidays observed by federal or state agencies.

(50) As compensation for the keeping of prescribed records, accounting for and remitting the tax, dealers are allowed a collection allowance. The dealer's collection allowance shall be computed at the rate of 3% on the first $1,000 of tax and 1% for all amounts in excess of $1,000 for the dealer's reporting period. The collection allowance shall not be allowed if the tax is delinquent at the time of payment or where there is a manifest failure to maintain proper records or make proper prescribed reports. Furthermore, the collection allowance may be reduced by 10%
or $50, whichever is less, if a dealer files an incomplete return. An "incomplete return" means a return which is lacking such uniformity, completeness, and arrangement that the physical handling, verification, or review may not be readily accomplished, including but not limited to, the failure to provide the amount of gross sales, exempt sales, taxable sales, tax collected or due, lawful refunds, deductions, or credits claimed, dealer's collection allowance, penalty, interest, and total tax due with the return.

(¶) A tax return on forms provided by the Department of Revenue shall be filed by the 20th day of each month, whether or not any taxes are due, by all persons required under Chapter 212, F.S., to file returns except in those instances where the Department of Revenue has specifically granted permission to file returns on some other basis. Tax returns shall be filed and taxes paid to the Department of Revenue at Tallahassee or to designated offices throughout the state. Any person or any duly authorized corporation officer or agent, members of any firm or incorporated society or organization who refuses to make a return and pay the taxes due shall, upon conviction, be deemed guilty of a misdemeanor. Multistate purchasers of services subject to tax on an apportioned basis are required to annually file a Supplemental Sales Tax Return for Exempt Purchase Permit Holders (DR-15SUP). See Rule 12-ER-87-2(2)(b)4.a.

(¶) The Department is not authorized to extend the time for any dealer under Part I, Chapter 212, F.S., to make any return or pay any tax. Any dealer or other person who fails to make a return and pay the tax due, on or before the due date, is liable for penalties, interest and loss of collection allowance, regardless of any particular problems encountered in assembling the necessary data for filing a return and paying the tax.

(¶)(a) Interest shall accrue on any delinquent sales
or use tax at the rate of 1% per month (pro-rated daily) of
the amount due from the date of delinquency until the date
on which the tax is paid.

(b) However, the Executive Director of the Department
of Revenue may waive interest for taxes due and payable on
newly imposed services for the period from between July 1,
1987, through and September 30, 1987, if it is determined that
the interest will cause an undue hardship
on the taxpayer. Requests for waivers will be reviewed
on a case by case basis.

(2)(a) When any dealer or other person required to
do so under Part I, Chapter 212, F.S., shall fail to make a
return or pay the taxes due within the time required, a
delinquent penalty shall be added to the tax in the amount
of 5% if the failure is for not more than 30 days, with an
additional 5% delinquent penalty for each additional 30
days, or fraction thereof, during the time the failure
continues, not to exceed, however, a total delinquent
penalty of 25% in the aggregate.

(b) However, the Executive Director of the Department
of Revenue shall waive delinquent penalties for returns for
taxes due and payable on newly imposed services for the

(10+) The estimated tax filing requirements imposed by
s. 212.11(1), F.S., shall not apply to any dealer who is
required to first remit taxes to the Department on or after
July 1, 1987.

(11+) Beginning October 1, 1987 instead of 12 monthly
reporting periods the department may authorize a quarterly
return and payment for dealers collecting tax solely from
the provision of services, when the tax remitted by the
dealer for the preceding quarter was less than $500 in each
month.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law implemented Sections 1, 2, 16, 17 and 36, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-8 Transition Rule.

(1) When a service that is taxable beginning July 1, 1987, is provided prior to July 1, 1987, it shall not be taxed, notwithstanding that compensation for the service was paid or payable on or after July 1, 1987.

(2) When a service that is taxable beginning July 1, 1987, is provided on or after July 1, 1987, the service shall be taxed unless it was prepaid in full prior to April 1, 1987.

(3) When a service that is taxable beginning on July 1, 1987, is provided over a period of time beginning prior to July 1, 1987, and ending after July 1, 1987, the service shall be taxed only upon that portion of the service provided on or after July 1, 1987.

(4) For purposes of this rule, a service shall be deemed prepaid in full if payment for the service is pursuant to a finance agreement and such agreement was sold by the service provider to a third party prior to April 1, 1987.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-8 Laws of Florida.
Law Implemented Section 37, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-9 Bad Debts And Return Payments For Services.

(1) A dealer who has paid taxes on the sale of services may take credit or obtain a refund for any tax paid by him on the unpaid balance due on worthless accounts within 12 months following the month in which the bad debt was charged off for federal income tax purposes. If an account so charged off is thereafter in whole or in part paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

(2) When any sale of a service, upon which a tax has been paid to the dealer by the purchaser is cancelled and the sales price of the service is refunded to the purchaser the dealer shall also refund to the purchaser the tax paid by the purchaser. If in lieu of a refund of the sales price, the dealer credits such amount on the purchaser's account, a corresponding credit for sales tax previously paid by the customer shall be made.

(3) Any dealer who refunds taxes paid to any purchaser for which he later claims a credit or refund shall keep internal records to support such transactions.

(4) When any dealer refunds the tax paid by a purchaser, the department will refund such tax if application therefore is made in writing within 36 months from the date of payment to the state. The Application For Refund (DR-26), must state in clear and convincing terms the grounds for a refund.

(5) Any dealer who is entitled to a refund of taxes paid to the department may in lieu of applying for a refund, take credit for such a month on any subsequent report filed within 36 months of the date on which the dealer remitted the tax to the state.
(6) Whenever a dealer credits a customer with tax on
cancelled sales of services, he must refund such tax to his
customer before his claim to the state for credit or refund
will be approved.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.

Law Implemented Section 20, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-BR-87-10  Sales Between Related Entities.

(1) Services of Partners to Partnerships. - The tax on
the sale or use of services does not apply to services that
partners who are either natural persons or professional
corporations render exclusively to their partnerships,
unless the partner renders such services to the partnership
in the capacity of an independent contractor. Accordingly,
services rendered exclusively to a partnership by a
corporate partner that is not a professional corporation are
not exempt whether or not such services are rendered by the
corporate partner as an independent contractor.

(a) Example: Brown, an attorney who is also a
Certified Public Accountant, is a member of a partnership of
attorneys. He and other partners provide services for the
partnership, none of which is taxable, although services of
the partnership to clients are taxable. The partnership
needs a C.P.A. to set up its books and records and to
instruct its employees in maintaining them; and engages the
services of Brown, as a C.P.A., to do so and to receive a
fee from the partnership apart from his share as a partner
in the earnings of the partnership. Those services are
provided by Brown to the partnership in his capacity as an
independent contractor, and are not exempt.

(b) Example: Green, Black, and White are architects,
each of whom has incorporated his practice as a professional
corporation. Their corporations form a partnership of
architects. Since the partners are professional
corporations, the services rendered by each corporation to
the partnership are exempt, but only to the extent that such
services are rendered exclusively to the partnership in a
capacity other than as an independent contractor.

(c) Example: Corporations X and Y, neither of which is
a professional corporation within the meaning of
12-ER-87-10(1), form a partnership for the production of items of tangible personal property. Corporation X (the capital partner) contributes capital or property other than money in exchange for its partnership interest. Corporation Y (the service partner) receives its partnership interest in exchange solely for its services. Corporation X provides services to the partnership in its capacity as an independent contractor and is compensated for such services separately and apart from its share of profits. Corporation Y is not separately compensated for its services. The partners receive periodic cash distributions of profits and/or operating cash flow. Periodically, the partnership also reimburses the partners for expenses advanced for the operation of the partnership. Payments by the partnership to Corporation X which are not paid for services rendered by X, whether such payments are made in the form of distributions of profits, cash flow distributions, reimbursements of expenses advanced by the partner on behalf of the partnership, or otherwise, do not constitute amounts paid for services within the meaning of § 312.02(21), F.S.

Therefore, such payments made to Corporation X are exempt from the tax on services. Any payments made by the partnership to Corporation Y for any purpose other than for the reimbursement of expenses or capital, however, are not exempt from the tax on services whether such taxable payments are characterized under the terms of the partnership agreement as other types of payments such as guaranteed or percentage payments of profits. Payments made other than for services must be separately identified and their exemption or nontaxability established to the satisfaction of the Department based upon all of the facts and circumstances surrounding such payments rather than the form in which such payments are cast. For instance, payments made to Y in excess of the adjusted basis of Y's partnership interest for purposes of federal income tax
shall be deemed to be payments for services unless the
exemption or nontaxability of such payments are established
to the satisfaction of the Department. Similarly, payments
made to X in excess of the adjusted basis of its partnership
interest shall be deemed to be payments for services if such
payments either: exceed X's percentage interest in
partnership profits or losses; or the separate payments to X
for its services as an independent contractor are less than
the sales price for such services.

(2) Services Performed Between Members of an Affiliated
Group of Corporations.

(a) Services between members of an affiliated group of
corporations as defined in s. 1504(a) of the Internal
Revenue Code, whose members are includable under ss.
1504(b), (c) or (d) of the Internal Revenue Code and are
eligible to file a consolidated return for federal income
tax purposes, or mutual insurance companies which are
members of one insurance holding company system subject to
s. 628.801, s. 1504(b)(2) of the Internal Revenue Code not
being applicable to such mutual insurance companies, are
exempt from the tax. However, this exemption shall apply
only to the sale or use of services between members
of an affiliated group which are included for the purpose
of s. 212.0591(9), F.S.

(b) If the exemption provided in paragraph (a) is not
applicable, the sales price or cost price of the services
between members of the affiliated group shall be based upon
the fair market value of the service.

(c) The sale or use of services between divisions that
may be separate taxpayers within the same corporation shall
be exempt.

(d) Nothing within the provisions of this subsection
shall be construed to require the filing of the consolidated
return under Chapter 220, F.S., in order to qualify for the
exemption.
(e) The parent corporation of an affiliated group may elect to define its affiliated group to exclude any member who has no tax nexus in Florida and whose business activities are unrelated to the business activities of the other members of the group.

1. The election shall be made by the Election to Exclude Members of an Affiliated Group, Chapter 212, F.S., (DR-4), dated July 1987, and Exempt Service Purchase Permit for Out-of-State Business and Persons (DR-14P) are available, without cost, upon written request directed to the Department of Revenue, Supply Section, Tallahassee, Florida 32399-0100, on or before the 20th day of the month following the first month in which the taxpayer incurs a tax liability under Chapter 212 after June 30, 1987.

2. Such election shall be effective and continue in effect for all calendar months remaining in the taxpayer's taxable year determined under Chapter 220, F.S.

3. An amendment to such election may be made for each subsequent taxable year by filing The Election to Exclude Members of an Affiliated Group, Chapter 212, F.S., (DR-4) on or before the 20th day of the month following the first calendar month in any subsequent taxable year and shall be effective and remain in effect for all calendar months of such subsequent taxable years.

4. Any such election properly made for any taxable year shall continue in effect for all subsequent taxable years unless and until altered or revoked by timely filing an amendment as herein provided.

5. In no event shall the parent corporation of an included member be excluded from the affiliated group.

6. If a member is excluded by this election then the sales of services between such excluded members and other members are taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law implemented Sections 3 and 7, Chapter 87-6, Laws of Florida. Section Chapter 87- Laws of Florida.

History - New 7-1-87.
12-ER-87-11  Exemptions from Tax on Sales or Use of Services. Rules promulgated by the Department of Revenue cannot be construed to extend exemptions beyond the scope of those intended by the statutes. Reference to "SIC" in this rule and in the statutory provisions on which this rule is based refer to classification in the Standard Industrial Classification Manual, 1972, as published by the Office of Management and Budget, Executive Office of the President, and as amended in the 1977 Supplement. Unless a provision of Part I of Chapter 212, P.S., clearly provides otherwise, references to the SIC Code are intended to describe activities or services and not establishments. Such references shall not be construed to tax or exempt a service solely because it is performed by a person in a referenced establishment. Neither shall such references be construed to preclude taxation or an exemption for a service solely because it is performed by a person not in a referenced establishment. No exemption from the sales and use tax on services shall be deemed to exempt transactions that were subject to taxation pursuant to other provisions of Part I of Chapter 212, P.S., on January 1, 1987.
(1) Occasional or Isolated Sales. - The tax on sale
or use of services does not apply to the occasional or
isolated sale of services by a person who does not hold
himself out as engaged in business or to the use of services
purchased in a transaction that is an isolated sale.
Example: Smith, a retired automobile mechanic, occasionally
repaired automobiles for friends, for which he charges less
than they would have to pay elsewhere. His services are
exempt as occasional or isolated sales of services by a
person who does not hold himself out as engaged in business.
Later, he decides to improve his finances, and tells his
friends and acquaintances that he will accept work from the
general public, and places notices on bulletin boards
advertising his services. His services are no longer exempt
as occasional or isolated sales of services by a person who
does not hold himself out as engaged in business.
(2)(a) **Employee Services.** — Services by employees to
their employers are exempt.

(b) In determining whether a person is an employee, the
department will consider the following indicia:

1. Whether the person is paid a wage or of
   salary.

2. Whether the "employer" is required to withhold
   income tax from the person's wage or salary.

3. Whether F.I.C.A. tax is required to be paid by
   the "employer".

4. Whether the "employer" is required to make
   unemployment insurance contributions on behalf of the
   person?

However, if all of the indicia mentioned above are present,
the person is nevertheless not an employee if he is acting
in the capacity of an independent contractor. A person may
be an employee even if one or more of the indicia are not
present and he is not acting as an independent contractor.

Example: B is a carpenter who works for Y. Y pays him
$8.00 per hour. Y withholds income tax from the money he
pays B. Y treats B as an employee and controls the details
of his work. B is covered by Y's workmen's compensation
insurance. B is an employee working for wage or salary.
His services are not subject to tax.

(c)1. A salesperson who sells for a company on a
commission basis is not an employee of the company where the
company exercises no direct control over the details of
performance of the salesperson's duties beyond general
statements about the scope and nature of the salesperson's
obligations under the contract between the salesperson and
the company. In addition, where commissions paid to a
salesperson are not subject to withholding taxes or social
security taxes, the salesperson is not considered an
employee of the company. Therefore, such salesperson's services are subject to tax.

2. Notwithstanding the foregoing provision, a "fee sharing" relationship, as defined in § 212.02(19), F.S., between real estate agents and real estate brokers shall not be considered a "retail sale".

29. Example: B sells magazines door to door for X Magazine Company, who solely operates in Florida. X pays B a commission, does not control the details of B's work, is not required by applicable law to make unemployment insurance contributions on B. B is not an employee. B is an independent contractor in business for himself. B's services are taxable. B would be required to register as a dealer, to collect the tax from the magazine company, and to remit same to the state.
(3) Agricultural Services. - Agricultural services described in paragraph (a) are exempt from the tax on the sale or use of services, but those described in paragraphs (b), (c), and (d) are not exempt as agricultural services.

(a) Agricultural services enumerated in SIC Major Group 07, including:

1. Soil preparation services in land breaking, plowing, application of fertilizer, seed bed preparation, and other operations for improving the soil, including, but not limited to chemical treatment of soil; fertilizer application: line spreading; plowing; seed bed preparation; and weed control, before planting.

2. Crop planting, cultivation, and protection, including aerial dusting and spraying; bracing of orchard trees and vines; citrus grove cultivation; mechanical and flame cultivation; cultivation of sprouts, twigs, etc.; detasselling of corn; disease control for crops, with or without fertilizing; dusting crops, with or without fertilizing; entomological service; hoeing; insect control for crops, with or without fertilizing; planting, with or without fertilizing; pollinating; pruning of orchard trees and vines; seeding crops, with or without fertilizing; seeding of sprouts, twigs, etc.; spraying crops, with or without fertilizing; surgery on orchard trees and vines; thinning of crops, mechanical and chemical; weed control after planting; and irrigation system operation service of both systems providing and those not providing water.

3. Crop harvesting, primarily by machine, including machine harvesting of berries, cotton, fruits, vegetables, grain, peanuts, sugarcane, tree nuts: chopping and silo filling; combining; hay mowing, raking, baling, and chopping; and threshing.

4. Crop preparation for market services, including bean cleaning; corn shelling; cotton ginning; cotton seed delinting; drying of corn, rice, hay, fruits, and
vegetables; flax decorticating and retting; fruit
precooling, not in connection with transportation; grain
cleaning; custom grain grinding; hay baling; moss ginning;
packaging fresh or farm-dried fruits and vegetables; potato
curing; sorting; grading, and packing of fruits and
vegetables; sweet potato curing; tobacco grading; tree nut
hulling and shelling; and vegetable precooling, not in
connection with transportation.

5. Veterinary services provided by licensed
practitioners of veterinary medicine, dentistry, or surgery,
for cattle, hogs, sheep, goats, poultry, pets and other
animal specialties; also including animal hospitals.

6. Livestock services, except for services for animal
specialties (as to which, see subparagraph 7., below, and
paragraph (d)), including only artificial insemination;
breeding of livestock, except animal specialties (see
paragraph 7.); catching poultry, with no hauling; cattle
spraying; cleaning poultry coops; dairy herd improvement
associations; milk testing, for butterfat, etc.; pedigree
record services for cattle, hogs, sheep, goats, and poultry;
sheep dipping and shearing; showing of cattle, hogs, sheep,
goats, and poultry; custom slaughtering for individuals; and
vaccinating livestock.

7. Animal specialty services that relate to
"agricultural products "as defined in s. 618.01(1), Florida
Statutes, as follows:

"618.01 Definitions

"In construing this chapter, where the context permits,
the word, phrase, or term:

"(1) "Agricultural products" shall include
horticultural, viticultural, forestry, aquatic, dairy,
livestock, poultry, bee, and any farm products;"
Animal specialty services not qualifying for the exemption
include such services as veterinary boarding kennels;
breeding of animals; other than veterinary for cattle, hogs,
sheep, goats and poultry; dog grooming; honey straining (on
the farm); pedigree record services; showing of pets and
other animal specialties; training of pets and other animal
specialties; and vaccinating pets and other animal
specialties, except by veterinarians.

8. Farm labor and management services, which supply
labor for agricultural production or harvesting, or provide
farm management services, including crew leaders for farm
labor on a contract basis; farm labor contractors; citrus
grove management and maintenance, with or without crop
services; farm management services; orchard management and
maintenance, with or without crop services; and vineyard
management and maintenance, with or without crop services.

9. General crop services; that is, a combination of
services from soil preparation through harvest.

(b) Not exempt as agricultural services are landscape
and horticultural services enumerated in SIC Group Number
078, which include:

1. Landscape counseling and planning, including garden
planning; horticultural advisory or counseling services;
landscape architects; landscape counseling; and landscape
planning.

2. Lawn and garden service, including Bermuda
sprigging; cemetery upkeep, independent; garden maintenance;
garden planning; lawn care; lawn fertilizing; lawn mowing;
lawn spraying; lawn sprigging; and mowing highway center
strips and edges.

3. Ornamental shrub and tree services, including
arborist services; ornamental bush planting, pruning,
bracing, spraying, and surgery; ornamental tree planting,
pruning, bracing, spraying, and surgery; and tree trimming
for public utility lines.

(c) Animal specialty services enumerated in SIC
Industry Number 0752 and described in subparagraph 7. of
paragraph (a) are not exempt unless they when they do not
relate to agricultural products, as defined in that
subparagraph.

(d) Veterinary services performed by licensed
practitioners primarily engaged in the practice of
veterinary medicine, dentistry, or surgery are exempt
whether they relate to agricultural products. However,
where a licensed veterinarian provides a service that can
legally be provided by one who is not a licensed
veterinarian for animals not his own nor owned by his
employer and that, when performed by such an individual
is not exempt, the veterinarian's performing it does not
make it exempt.

1. Example: A licensed veterinarian keeps a pet dog
in his kennel ("animal hospital") over a period of days
while performing veterinary services on the animal that can
only be legally performed by a licensed veterinarian, and is
compensated for these kennel services, in addition to
veterinarian fees. The kennel services would be exempt as
incident to the veterinary services.

2. Example: The above veterinarian has excess
capacity in his kennel, and the owner of a pet dog prevails
upon him to board the dog in the kennel while the owner is
away from the city, for a charge, without providing
veterinarian services. This service would be taxable,
since: the service is not a veterinary service; it could be
legally provided by anyone who is not a licensed
veterinary; and as an animal specialty service, it is not
related to an agricultural product.
(4) Transportation and Warehousing Services for Specified Types of Cargo. - The tax on sale or use of services does not apply to transportation and warehousing services described in paragraph (a) for cargo described in paragraphs (bc) through (gd) of this subsection.

(a) The services to which this exemption applies are transportation and warehousing services enumerated in SIC Major Group Numbers 40, 44, 45, and 47 on pages 220, 224, 225, 226, 228, 229, 230, 231, 233, and 234 of the Standard Industrial Classification Manual. These include:

1. Rail transportation, such as railroad transportation, and switching and terminal services.

2. Motor freight transportation and warehousing, such as local trucking with or without storage, long-distance or over-the-road trucking and other trucking that is not local, farm product warehousing and storage, refrigerated warehousing, and terminal service for motor freight transportation (See Rule 12-ER-87-11(17)).

3. Water transportation that is not generally exempt under subsection (19), such as deep sea domestic transportation, coastwise and intercoastal transportation, rivers and canals and bays and sounds of the ocean, ferries and other transportation, local water transportation; and miscellaneous water transportation services, incidental to water transportation (See Rule 12-ER-87-11(19)).

4. Air Transportation by both certificated and noncertificated carriers, and facilities services and services related to air transportation (See Rule 12-ER-87-34(b)); and

5. Miscellaneous transportation services not otherwise exempt under subsections (17), (18), (19), and (24), such as freight forwarding, arrangement of transportation, rental of railroad cars.

(b) Agricultural commodities. The transportation and warehousing services enumerated in paragraph (a), above, for
agricultural commodities are exempt. For purposes of this exemption, goods that were originally agricultural commodities cease being such when they no longer retain their original identity, such as after they are processed, packaged in cans, or frozen.

1. Example: Cotton is ginned and baled. It is still cotton, and retains its original identity.

2. Example: Baled cotton is made into thread, in preparation for making cotton cloth. It has acquired a new identity; something different has emerged. It is no longer cotton, an agricultural commodity the transportation or warehousing of which is exempt. It is now thread, which is not an agricultural commodity.

(c) The transportation and warehousing services enumerated in paragraph (a), above, are exempt when provided for phosphate rock as defined in s. 211.30(9), Florida Statutes as follows: potash, as described in SIC Industry Number 1474; sulfur, as described in SIC Industry Number 1477; nitrogenous fertilizers as enumerated in SIC Industry Number 2073; and phosphatic fertilizers as enumerated in SIC Industry Number 2074. s. 211.30(9) and the references in the Standard Industrial Code Manual to these Industry Numbers are reproduced below:

Section 211.30(9), Florida Statutes:

"(9) 'Phosphate rock' means a variable mixture of calcium phosphates and other minerals that have fluorapatite as the dominant phosphatic mineral, found in bedded deposits of marine origin. This term includes the forms of land-pebble and river-pebble phosphates and the phosphate concentrates derived from beneficiation of these forms. This term does not include colloidal phosphatic clays."

Excerpts from pp. 42 and 124, Standard Industrial Classification Manual.
Potash, Soda, and Borate Minerals

Services related to and for the purpose of mining, milling, or otherwise preparing natural potassium, sodium, or boron compounds (other than common salt).

Alum (natural) mining
Borate compounds (natural) mining
Borax, crude, ground and pulverized
Borax mining
Boron mineral mining
Colemanite mining
Glauber’s salt mining
Kernite mining
Potash mining
Potassium compounds (natural) mining
Salines (except common salt) mining
Soda ash (natural) mining
Sodium compounds, natural (except common salt) mining
Trona mining
Uriate mining

(d) Potash. The dictionary definition of which potash is, “Any substance containing potassium; especially, salts derived from natural brines, distillery waste, flue dusts of blast furnaces, etc. whose potassium content is expressed in terms of K2O: used in fertilizer, soaps, etc.”

Sulfur

Services related to and for the purpose of mining native sulfur, including the extraction of native sulfur at well operations, and mining and beneficiating sulfur ore. Services involving mining, preparing to mine, or concentrating pyrites are classified in industry 1479.
Grainstone mining
Sulfur (native) mining

(e) Sulfur, the dictionary definition of which is, "A pale-yellow, nonmetallic chemical element found in crystalline or amorphous form: it burns with a blue flame and a stifling odor and is used in vulcanizing rubber, making matches, paper, gunpowder, insecticides, sulfuric acid, etc."

2877 AGRICULTURAL CHEMICALS Continued

(f) Nitrogenous fertilizers, as enumerated in SIC Industry Number 2873, as follows: Services related to and involving "...manufacturing nitrogenous fertilizer materials or mixed fertilizers from nitrogenous materials produced in the same establishment. Included are ammonia fertilizer compounds and anhydrous ammonia, nitric acid, ammonium nitrate, ammonium sulfate and nitrogen solutions, urea, and natural organic fertilizers (except compost) and mixtures.

"Ammonia liquor"
"Ammonium nitrate and sulfate"
"Anhydrous ammonia"
"Aqua ammonia, made in ammonia plants"
"Fertilizers: natural (organic), except compost"
"Nitric acid"
"Nitrogen solutions (fertilizer)"
"Plant foods, mixed: made in plants producing nitrogenous fertilizer"
"Urea"

2874

(g) Phosphatic fertilizers, as enumerated in SIC Industry Number 2874, as follows:
Services related to and involving "...manufacturing phosphatic fertilizer materials, or mixed fertilizers from..."
phosphatic materials produced in the same establishment.

Included are phosphoric acid; normal, enriched, and concentrated superphosphates; ammonium phosphates; nitro-phosphates; and calcium meta-phosphates.

"Ammonium phosphate
"Calcium meta-phosphate
"Defluorinated phosphate
"Di ammonium phosphate
"Fertilizers, mixed: made in plants producing phosphatic fertilizer materials
"Phosphoric acid
"Plant foods, mixed: made in plants producing phosphatic fertilizer
"Superphosphates, ammoniated and not ammoniated"

(h) The exemption that is the subject of this subsection is an exemption from the tax on sale or use of services, not an exemption from other taxes that may be applicable. Therefore, the following remain taxable:

d) Some transactions are taxable notwithstanding their inclusion in the GIC Major Groups listed in paragraph (a), even when the goods transported or warehoused are those described in paragraphs (b) and (c). The lease of real or tangible personal property is a taxable transaction, notwithstanding the exemption provided in s. 212.0592(7)(a).

1. Leasing of warehouse space, such as, but not limited to (Industry Number 4222) cold storage locker rental; rental of food lockers, and frozen food locker rental, as distinguished from providing warehouse service on a bailment basis, which was a non-taxable service on January 1, 1987.

2. Leasing of cargo handling facilities (Industry Number 6512) (as distinguished from services to make such facilities available to those needing cargo handling)
provided by such facilities), such as, but not limited to
(Industry Number 4463) marine cargo handling;

29. Renting or hiring modes of transportation, such as,
but not limited to (Industry Number 4469) renting, hiring,
or chartering of boats or steamship leasing;

30. Rental or leasing of fixed transportation
facilities, such as, but not limited to (Industry Number
4582) airport hangar rental or airport leasing, if operating
airport; or

5. Rental of railroad cars for services described in
(Industry Numbers 4742 and 4743), provided in conjunction
with rental of railroad cars.
(5) Food or Agricultural Broker Services.

(a) The tax on sale or use of services does not apply
to food or other agricultural broker services for
agricultural commodities or agricultural products as defined
in s. 618.01, F.S., which section of the Florida Statutes is
quoted in subparagraph 7. of subsection (3)(a) of this rule.
For purposes of this exemption, a food or other agricultural
broker is a person who solicits, negotiates, or arranges for
the transfer, transportation, purchase, or sale of
agricultural commodities, including both agricultural
commodities that retain their original identity and
agricultural products meeting the definition in s. 618.01,
F.S., whether retaining their original identity. Broker
services are exempt whether they relate to food agricultural
commodities or products or to non-food agricultural
commodities or products.

(b) If a food broker, brokers commodities other than
food or agricultural products, such brokerage service is
taxable.
6 Forestry Services. — The tax on sale or use of services does not apply to forestry services enumerated in SIC Group 065 and timber cutting, harvesting, estimating, or transportation services enumerated in SIC Group Numbers 241 and 242. These Groups are described on pages 29, 90, and 91 of the Standard Industrial Classification Manual. The following services are exempt:

(a) Forestry services, including cruising and estimating timber; forest fire prevention and fighting; forest management; forest pest control; timber valuation; and reforestation;

(b) Logging camp and contractor services, including cutting timber and producing rough, round, hewn, or riven primary forest or wood raw materials; bolts, wood: handle, heading, shingle, stave, etc; booming timber; wood burly; wood croches; driving timber, excelsior stock, hewn; last blocks, wood: hewn or riven; logging camps and logging contractors, not operating sawmills; logs: mine timbers, hewn; peeler logs; pickets and paling: round or split; untreated wood piling; pole cutting contractors; untreated wood poles; hewn, round or split wood posts; pulpwood camps; pulpwood contractors engaged in cutting, not operating pulp mills; fence rails: round or split; saw logs: skidding logs; "stumping" for turpentine or powder manufacturing; stumps; hewn railroad ties; timber (product of logging camps); veneer logs; and hewn wheelstock.

(c) Sawmill and planing mill services, including resawed (lumber) cants; dressed ceiling lumber; chipper mills: custom sawmills; softwood cut stock; flitches (veneer stock), made in sawmills; softwood flooring (dressed lumber); fuelwood from mill waste; kiln drying of lumber; lath, made in sawmills and lathmills; logging camps combined with sawmills; lumber, kiln drying of; lumber: rough sawed or planed; lumber stacking or sticking; planing mills, independent: except millwork; planing mills, operated in
conjunction with sawmills; resawing lumber into smaller
dimensions; sawdust and shavings; sawmills, except special
product mills; dressed lumber siding; sawed wood silo stock;
snow fence lath; sawed railroad ties; tobacco hogshead
stock; and wood chips manufacturing.

(d) Hardwood dimension and flooring mill services,
including wood blanks for bowling pins, handles, and textile
mach. accessories; wood blocks for bowling pins, handles,
and textiles mach. accessories; bobbin blocks and blanks,
wood; wood brush blocks: turned and shaped; wood furniture
carvings; wood chair frames for upholstered furniture;
hardwood chair seats; hardwood dimension; hardwood flooring;
wood frames for upholstered furniture; hardwood furniture
dimension stock; hardwood furniture squares; wood furniture
turnings and carvings; wood gun stocks; wood handle blanks;
sawed or planed handle stock; hardwood dimension lumber;
hardwood parquet flooring; picker stick blanks; hardwood
rounds or rungs, ladder and furniture; hardwood shuttle
blocks; wood spool blocks and blanks; hardwood chair
stock--turned, shaped, or carved; wood table slides for
extension tables; wood furniture turnings; and hardwood
vehicle stock.

(e) Special product sawmill services, manufacturing and
sawing special products including barrel heading and staves,
sawed or split; cooperage stock mills; sawed or split
cooperage stock: staves, heading, and hoops; excelsior,
including pads and wrapper; wood; sawed or split wood hoops
for tight or slack cooperage; special product sawmills,
except lumber and veneer mills; shakes (hand split
shingles); shingle mills; wood shingles, sawed or hand
split; wood wool (excelsior); and excelsior wrappers.
(7) Educational Services.

(a) Educational services enumerated in SIC Major Group 82 (except those enumerated in Industry Number 8299 excluding those services provided by bible schools) are exempt from the tax on the sale or use of services. Thus exempt are:

1. Elementary and secondary school services below university grade (ordinarily grades 1 through 12), including denominational and sectarian, such as academies, boarding schools, finishing schools, high schools, preparatory schools, kindergartens; military academies; and schools for the handicapped and retarded;

2. Educational services of colleges, universities, professional schools, and junior colleges, such as dental, engineering, law, and medical; theological seminaries; community and junior colleges; and technical institutes.

3. Library services and information center services; such as lending or circulating libraries; rental of books; centers for documentation;

4. Educational services provided by correspondence schools and vocational schools, such as data processing schools, business colleges and schools; schools training in banking; nursing schools; trade schools, including barber colleges and cosmetologist schools; and commercial art schools.

(b) Also specifically exempt by statute from this tax are educational services by any nonprofit religious organizations described in SIC Industry Number 866. These are religious organizations operated for worship or for promotion of religious activities, operated by religious organizations.

(c) Taxable educational services offered by specialized nondegree granting schools enumerated in SIC Industry Number 8299 are:

1. Art schools that are not commercial art schools;
2. Automobile driving instruction;
3. Baton instruction;
4. Ceramic schools;
5. Charm schools;
6. Civil service schools; and other short term examination preparatory schools;
7. Diction schools;
8. Dramatic schools;
9. Finishing schools (charm and modeling);
10. Flying instruction;
11. Hypnosis schools;
12. Language schools;
13. Modeling (clothes) schools;
14. Music schools (except those of educational institutions exempt under paragraph (a));
15. Personal development schools, including seminars, convention entrance or participation fees and continuing education fees for post-degree courses required for retention of professional designations;
16. Public speaking schools;
17. Reading schools;
18. Short term examination preparation schools;
19. Tutoring schools; and
20. Vocational counseling (except rehabilitation counseling).

(d) Services of dancing schools are not exempt as educational services, but, instead, are taxable as recreation services (SIC Industry Number 7911).
Governmental Entity Services. - Governmental Entity Services (except utility or sanitary services) that are enumerated in SIC Major Groups 43 and 91 through 97 are exempt. These Major Groups are described on pages 227 and 336 through 345 of the Standard Industrial Classification Manual.

(a) Included in these major groups, and thus exempt, are:

1. Executive services, such as those of offices of chief executives, city and town managers' offices; Mayors' offices; county commissioners' offices, Governors' office, President's office; and advisory and interdepartmental committees and commissions;

2. Legislative bodies, and their advisory and interdepartmental committees and commissions;

3. General government support services, such as those which provide personnel, building, auditing, and procurement services;

4. Court services;

5. Public order and safety services, such as police and fire protection services.

6. Public finance, taxation, and monetary policy services, such as those of tax and budget agencies and treasurers' offices;

7. Human resources services, such as administration of education, public health, social, manpower, and income maintenance programs, and administration of veterans affairs, except health and insurance.

8. Environmental quality and housing programs;

9. Economic programs;

10. National security and international affairs; and


(b) Services of the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation, though not included in any of the above SIC
Major Groups, are specifically exempt.

(c) Utility and sanitary services are specifically excluded from this exemption. However, sanitary services are, under some circumstances, entitled to the exemption described by subsection (20) of this section and under other circumstances are taxable (See Rule 12-ER-87-11(20) and 12-ER-87-35(a) for taxable services.

(d) Fees charged by governmental entities for recreation programs are exempt.

(e) Services that are taxable if provided by a service provider other than a governmental entity and that are not included in the exempt SIC Major Groups enumerated at the beginning of this subsection are taxable unless exempt on some other basis.

Example: A city, in its recreation programs, conducts a dancing school, for which a fee is charged. Since this is a taxable service that is not included in the exempt SIC Major Groups enumerated at the beginning of this subsection, and since it is not exempt on another basis, such fees are taxable.
(9) Financial Services. - Services of a financial
nature, which are of a type customarily performed by a
financial institution are exempt.

(a) For purposes of this exemption, "financial
institution" means a financial institution as defined in s.
655.005, Florida Statutes; any subsidiary thereof; any
holding company, other than a diversified savings and loan
holding company as defined in s. 408 of the National Housing
Act, which controls a financial institution; and any
subsidiary of such holding company; or any Federal Reserve
Bank and any Federal Home Loan Bank. The definition in s.
655.005 F.S., is: "Financial institution means an
association, bank, industrial savings bank, trust company,
international bank agency or representative office, or
credit union."

(b) "Financial charges that are, nevertheless, taxable
and not exempt are:

1. Charges for use of safety deposit boxes;
2. Charges for use of night deposit services;
3. Charges for issuing cashier's checks;
4. Charges for issuing traveler's checks;
5. Charges for issuing money orders;
6. Charges for preparation of individual tax returns;
7. Charges for copies of documents;
8. Stop payment charges;
9. Return check charges unless due to insufficient
funds. Return check charges, as used in this rule, means
charges by a financial institution, when the institution
dishonors (bounces) the check written by the customer;
10. Charges for service as personal representative of
estates of decedents;
11. Credit information and reporting services;
12. Overdraft charges. Overdraft charges shall mean
fees charged to a customer who overdraws his account where
bank covers the check;
13. Collection fees. Collection fees shall mean fees customarily charged by financial institutions for the collection of coupons, drafts, checks, foreign exchange items and similar over-the-counter collection items and other fees charged for collection services:

14. Hold mail fees;
15. Guardianship fees;
16. Credit card and charge card membership fees;
17. Cash vault fees; or
18. Data processing services not otherwise exempt, except check processing and check clearing services for both paper and paperless transactions.

19. Financial planning charges which would include charges for retirement planning, estate planning, and the making of long term planning decisions for investments and their financing.

Example: A bank prepares financial statements at a customer's request in connection with a loan the customer is seeking from the institution.

20. Charges for public accounting services of a type not customarily performed in connection with a customer account.

(c) A service by a financial institution the charge for which is waived or imputed is not taxable, either because it is exempt or because the sale or use of the services is outside the scope of the tax on the sale or use of services. The tax imposed under s. 212.059 shall not apply to the following services by a financial institution:

1. Any service for which the charge is waived or imputed:

Example: A bank imposes a charge of $25 a year for a type of data processing service, but waives the charge for each of its customers who, during the year, maintains a non-interest bearing checking account, the minimum balance in which has not, during the year, fallen below $1,000.
This service, on which the charge was waived is not subject to tax.

Example: A bank provides certain services listed in paragraph (b) above, and certain exempt services for preferred customers. As to some customers, the services are performed without charge. As to other customers, at the end of each month, the bank makes an analysis of the actual cost to the bank of maintaining the account and servicing the customer. The cost is then weighed against either the average or minimum balance the customer maintains and a monthly service charge is determined and assessed to the customer based upon the difference between the cost to the bank and the credit against the cost that the customer earns by virtue of the balance maintained. This is an example of an imputed charge; these imputed charges are not subject to tax under this part.

2. Investment advisory services when performed by a financial institution are not taxable.

(d) The services enumerated in paragraph (b) above shall not be taxable when provided to a non-resident entity or non-resident person as defined in Rule 3C-15.003, Florida Administrative Code (1987).
(10) Health Services.

(a) Exempt from the tax on the sale or use of services are health services enumerated in SIC Major Group 80 and health services provided by licensed or certified
acupuncturists, respiratory therapists and respiratory
therapy technicians, audiologists and speech-language
pathologists, physical therapists and physical therapist
assistants, opticians, hearing aid specialists, and home
health agencies and hospices.

(b) Major Group 80 is on pages 321 through 323 of the
Standard Industrial Classification Manual, in which the
following services are enumerated:

1. Services of licensed physicians, including clinics
or dispensaries operated by groups of physicians;
psychiatrists and psychoanalysts; and surgeons;

2. Services of licensed dentists, including
orthodontists and dental surgeons;

3. Services of licensed osteopathic physicians;

4. Services of licensed chiropractors;

5. Services of other licensed practitioners engaged in
practice in health fields, such as optometrists,
chiropractors, Christian Science practitioners, dieticians,
midwives, naturopaths, nurses (both registered and
practical), nutritionists, occupational therapists,
podiatrists, physiotherapists, psychologists (clinical),
psychotherapists (not M.D.'s);

6. Services of nursing and health related personal care
facilities, including extended care facilities, skilled
nursing homes, convalescent homes with health care,
domiciliary care with health care, homes for retarded with
health care, personal care facilities with health care, and
rest homes with health care;

7. Hospital services, including general medical and
surgical hospital services, mental hospital services,
psychiatric hospital services, and specialty hospital
services;
8. Medical and dental laboratory services.
9. Medical services provided through outpatient care
facilities, including clinics not operated by groups of
licensed practitioners, clinics for family planning, dental
insurance (providing services through own facilities),
dispensaries not operated by groups of licensed health
practitioners, group health associations providing medical
services in health maintenance organizations, medical
insurance (providing services through own facilities),
outpatient treatment clinics for alcoholism or drugs,
rehabilitation centers, outpatient (medical treatment), and
speech defect clinics; and
10. Other health and allied services, including blood
banks, blood donor stations, medical photography and art,
oxygen tent service, and visiting nurse associations.
(11) Insurance Services.

(a) Exempt from the tax on the sale or use of services are insurance services of agents and brokers, as enumerated in SIC Major Group 64, insurance service companies, and (with the exception discussed in paragraph (d)) consideration paid for insurance, including annuities, as defined under the Florida Insurance Code and Chapter 440, Florida Statutes.

(b) SIC Major Group 64, concerning insurance agents and brokers whose services are exempt, is on page 288 of the Standard Industrial Classification Manual. It describes agents primarily acting as independent contractors in the sale or placement of insurance contracts with one carrier, more than one carrier, or those who do not represent any particular carrier. Agents or brokers who are employees of the insurance carriers they represent are not exempt under this exemption, but are exempt as employees (see subsection (2)).

(c) Services of insurance service companies that are exempt include fire loss appraisal, insurance adjustment, advisory, educational, information, inspection and investigation, loss prevention, patrol, processing of claims, professional standards, reporting, research, pension and retirement plan consulting, policyholders’ consulting, and ratemaking services.

(d) Consideration paid for insurance is exempt. Title V of Chapter 624, Florida Statutes, defines and enumerates various types of insurance, as follows: life insurance, health insurance, casualty insurance (including vehicle insurance, liability insurance, workers’ compensation insurance, burglary and theft insurance, personal property floaters, glass insurance, boiler and machinery insurance, leakage and fire extinguishing equipment insurance, credit insurance, malpractice insurance, animal insurance, elevator insurance, entertainment insurance, insurance against
failure of certain institutions to record documents or
failure to file certain personal property instruments, and
miscellaneous casualty insurance recognized and regulated by
the Florida Department of Insurance; surety insurance
(including insurance guaranteeing the fidelity of persons
holding positions of public and private trust, guaranteeing
the performance of certain contracts, indemnifying financial
institutions against check alteration or forgery and against
loss of valuable papers or property); marine insurance;
title insurance (but see paragraph (g), below); and funeral
insurance.

(e) Two other chapters of Florida Statutes recognize
the essential nature of other transactions as insurance, and
authorize the Florida Department of Insurance to exercise
jurisdiction over and to regulate them. These are:

1. Fraternal benefit Societies (Chapter 632);
2. Warranty Associations (Chapter 634);
3. Mortgage Guaranty Insurance (Chapter 635);
4. Professional Service Plans (Chapter 637);
5. Ambulance Service Contracts (Chapter 638);
6. Preneed Funeral Contracts (Chapter 639);
7. Health Care Service programs (Chapter 641);
8. Legal Expense Insurance (Chapter 642); and

Fraternal benefit societies (Chapter 632) and bail bondsmen
(Chapter 648). Payments to them for assuming certain risks
are, therefore, exempt as insurance from this tax.

(f) Also exempt as insurance are "allied lines
insurers" that pay insurance premiums taxes and motor
vehicle service agreement companies that are expressly
exempt from sales tax pursuant to part I, Chapter 634, F.S.
Other organizations regulated by the Department of Insurance
are subject to sales tax because such companies neither pay
insurance premium taxes nor are they expressly exempt from
sales tax pursuant to Chapter 634, F.S. Instead of
providing benefits for the occurrence of theft, accident, 
ilness or death, non-exempt companies sell contracts for an 
initial fee promising the performance of maintenance, 
repair, or replacement services for the occurrence of normal 
wear and tear of tangible personal property or real 
property. Such organizations include home warranty 
associations and service warranty associations defined in 
Chapter 642, F.S. Similar organizations regulated by the 
Department of Insurance are not exempt from sales or use 
taxes pursuant to this paragraph but are exempt from such 
taxes because they constitute services that are expressly 
exempted by the provisions of Chapter 212, F.S. Such 
similar organizations include optometric service plans (part 
I of Chapter 637), pharmaceutical service plans (part II of 
Chapter 637), and ambulance service associations (Chapter 
638), but do not include legal expense corporations defined 
in Chapter 642, F.S. Also exempt are insurance are "altered 
times insurers" regulated by the Department of Insurance, 
which sell insurance-type contracts, including motor vehicle 
service agreement companies (Part I of Chapter 634), home- 
warranty associations (Part II of Chapter 634), service 
warranty associations (Part III of Chapter 634), optometric 
service plans (Part I of Chapter 637), pharmaceutical 
service plans (Part II of Chapter 637), dental service plan 
corporations (Part III of Chapter 637), ambulance service 
associations (Chapter 638), legal expense corporations 
(Chapter 642), and continuing care facilities (Chapter 651). 
All of these organizations sell insurance-like contracts for 
an initial fee or premium which promise the performance of 
certain services or the provision of certain benefits in the 
future upon determinable contingencies.

(g) Notwithstanding paragraph (d), above, consideration 
paid for title insurance that is in excess of 110 percent of 
the risk premium rate promulgated pursuant to s. 627.782, is 
not exempt as consideration paid for insurance. Section
627.782, F.S., gives the Florida Department of Insurance the power and duty to promulgate the risk premium rates to be charged in this state by insurers for the respective types of title insurance contracts and services incident thereto, and to promulgate rules on the applicability of such rates. That Department's rules are in Chapter 4-21, Florida Administrative Code. A property owner is more likely to be required to pay more than 110 percent of the risk premium rate if he or she purchases title insurance in a closing. In this event, the excess over 110 percent of the risk premium rate represents charges for such services provided in addition to assumption of risk as title searches, title examination, document preparation, recording, recertification of an abstract, etc.

(h) Transactions that, though involving some assumption or risk, are, considered as a whole, more in the nature of sales of uses of services than insurance transactions are not exempt as insurance. Recognition by the Florida Department of Insurance of such a transaction as insurance will be considered as evidence that it is more in the nature of an insurance than a service transaction, but will not be conclusive in this regard.

1. Example: Brown, an attorney, agrees to provide his client, Green, all the legal services he needs for a year for a $5,000 retainer fee. The fee would be taxable when the services are performed.

2. Example: Annoying Pest Control Co., for a charge of $200 eradicates termites in a building, and obligates itself, in the event that any termites are found on the premises within a year after its service, not only to return and carry out eradication activities without further charge, but also to repair at its expense any damage caused by termites since its original service. The charge would be fully taxable.

(i) Annuities - For purposes of the exemption of
"annuities" from the tax on the sale or use of services, an
annuity is defined as a right to receive payments at regular
intervals during an individual's lifetime, or for a stated
number of years, or in perpetuity.

(j) The exemption of consideration paid for insurance
is only an exemption from the tax on the sale or use of
services, not from the tax on the sale or use of tangible
personal property. Therefore, when insurance is purchased
as part of the sale of tangible personal property, the
portion of the sale attributable to the insurance portion of
the entire transaction is subject to the tax as a on-the
sale of tangible the personal property.

Example: Blue purchases an automobile and receives with it
a guarantee of its tires for a period to two years, which
entitles him to have any tire replaced if it should become
unusable at anytime during that period, even if not due to a
defect in the tire. The total cost of the transaction is
taxable, without any reduction based on the value of the
insurance coverage.
(12) Interest.

(a) The tax on sale or use of services does not apply to interest, which is money paid for the use of money. A Federal court, in *Rosen v. U. S.*, C.A.Pa., 288 F.2d 658, 660 defined interest as "the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money." Where a transaction involves compensation both for a service and for interest, the burden of proof is on the person claiming the interest exemption or exclusion to prove how much of the compensation is for interest and how much is for taxable service.

(b) "Points" that constitute prepayment of interest are exempt as interest from the tax on sale or use of services.

(c) Credit card interest is exempt.

(d) Discount charges for the purchase of accounts receivable are exempt.
(13) **Coin Operated Laundries.** - Exempt from the tax are coin-operated laundries and coin-operated dry cleaning establishments enumerated in SIC Industry Number 7215. As described on page 298 of the Standard Industrial Classification Manual, these are establishments primarily engaged in the operation of coin-operated or similar self-service laundry and dry cleaning equipment for use on the premises, or in apartments, dormitories, and similar locations; that is, coin-operated laundries, coin-operated dry cleaning, launderettes, laundromats, coin-operated laundry machine routes, and coin operated self-service laundry and coin operated dry cleaning (see 12-ER-87-27).

Maintenance assessments or fees paid by an association member to a homeowners association, residential condominium owners association, residential property owners association, residential mobile homeowners association, or residential cooperative association are not subject to tax on the sale or use of services. However, any consideration paid to a merchant's association by a lessee or licensee shall be taxable if such payments are a part of the consideration for the right to use or occupy the real property. If the payments are not part of the consideration for the right to use or occupy the real property, such payments are not taxable, see 12-ER-87-78.
(15) Membership Charges. - Dues or fees paid to maintain membership in organizations described in paragraphs (a)
through (c) are exempt from tax on the sale or use of services. However, in regard to those organizations described in paragraphs (a) and (b), this exemption is only applicable to dues and fees paid to those organizations which are not for profit corporations under Chapter 617, F.S., or a comparable law of another state or are exempt organizations under the Internal Revenue Code.

(a) Membership organizations enumerated in SIC Major Group 86, which, as described on pages 330 and 331 of the Standard Industrial Classification Manual, are:

1. Business associations promoting business interests, which includes better business bureaus; boards of trade, other than security and commodity exchanges; business associations, other than civic and social; Chambers of Commerce; contractors' associations; growers' associations that are not engaged in contract buying or selling; growers' marketing advisory services; industrial standards committees; Junior Chambers of Commerce; manufacturers' institutes; merchants' associations, that are not engaged in credit investigations; public utility associations; real estate boards; shipping and steamship company associations; and trade associations.

2. Professional membership organizations of professional persons for the advancement of the interest of their profession, which effectively includes bar associations; dental associations; engineering associations; medical associations; professional membership organizations; and scientific membership associations.

3. Labor unions and similar labor organizations for the improvement of wages and working conditions, which includes labor organizations: labor unions; and local or national trade unions.

4. Civic, social, and fraternal associations, which are
limited to alumni associations and clubs; Boy Scout
organizations; businessmen's clubs, civic and social; bars
and restaurants owned and operated for members of
organizations only; citizens' unions; civic associations;
community membership clubs, other than amusement and
recreation clubs; fraternal associations, other than
insurance offices; fraternities and sororities, except
residential; Girl Scout organizations; taxpayers'
associations; university clubs; veterans' organizations;
parent-teacher associations; singing societies; social
clubs, membership; YMCA, YWCA, YMHA, YWHA youth
associations, except hotel units.

5. Political organizations established to promote the
interests of a national, State, or local political party or
candidate, including, but not limited to, Democratic clubs
and Republican clubs.

6. Religious organizations operated for worship or for
promotion of religious activities, including, but not
limited to, churches, convents, monasteries, and religion
schools operated by religious organizations.

7. Other membership organizations, limited to
automobile owners' associations and clubs; Christian Science
reading rooms; farm bureaus; farm granges; historical clubs,
other than professional; humane societies, animal, and
poetry associations.

8. This exemption does not include dues or fees paid
to business establishments operated by membership
organizations such as hospitals, hotels, credit unions,
concert or opera companies, golf and country clubs, and
fraternity and sorority houses.

(b) Membership dues and membership fees paid to arts,
historical, and science organizations that are
not-for-profit corporations under Chapter 617, P.S., or a
comparable law of another state or are exempt organizations
under the Internal Revenue Code are not subject to tax.
(c) Membership dues or other fees paid to regulatory athletic associations are not subject to tax.
(16) Motion Picture Qualified Production Services -

(a) Production activities or services performed
directly in connection with the production of qualified
motion pictures performed by any person for a person
principally engaged in the business of producing qualified
motion pictures or for a person who owns or leases property
used primarily for the production of qualified motion
pictures are not subject to tax. As used in this
subsection, the term "production" means that phase of the
process by which qualified motion pictures are made or
fashioned, from (concept) script to finished product.

(b) Production activities or services performed directly
pictures includes and are limited to:

1. Photography, sound and recording, casting, location
managing and scouting, shooting, creation of special and
optical effects, animation, adaptation (language, media,
electronic or otherwise), technological modifications,
computer graphics, set and stage support (such as
electricians, lighting designers and operators, greensmen,
prop managers and assistants, and grips), wardrobe (design,
preparation and management), hair and make-up (design,
production, and application), acting performing (such as
acting, dancing and playing), designing and executing
stunts, coaching, consulting, writing, scoring, and
composing, choreographing, script supervising, directing,
producing, transmitting dailies, dubbing, mixing, editing,
cutting, looping, printing, processing, duplicating,
storing, and distributing;

2. The design, planning, engineering, construction,
alteration, repair and maintenance of real or personal
property including stages, sets, props, models, paintings,
and facilities principally required for the performance of
those limited services listed in subparagraph 1., above;
and

3. Property management services directly related to
property used in connection with the limited services
described in subparagraphs 1. and 2.

(c)1. "Qualified motion picture" for purposes of this
subsection means all or any part of a series of related
images, either on film, tape or other embodiment, including,
but not limited to, all items comprising part of the
original work and film-related products derived therefrom as
well as duplicates and prints thereof and all sound
recordings created to accompany a motion picture, which is
produced, adapted or altered for exploitation in, on or
through any medium or device and at any location, primarily
for entertainment, industrial, or educational purposes.

2. The term "qualified motion picture" for purposes of
this subsection does not mean all or any part of a series of
related images, either on film, tape or other embodiment,
including, but not limited to, all items comprising part of
the original work and film-related products derived
therefrom as well as duplicates and prints thereof and all
sound recordings created to accompany a motion picture,
which is produced, adapted or altered for exploitation in,
on or through any medium or device and at any location, for
advertising purposes or commercially produced for private
use.

(d) The exemption for qualified production services,
shall not be construed to exempt the sale, use, storage,
use, or other consumption in this state of tangible personal
property used or consumed in the production of motion
pictures.

81
(17) Trucking And Warehousing Services. - Trucking and
warehousing services, except for the services described in
paragraphs (b) and (c), are not subject to sales and use tax
on services.

(a) Local and long distance trucking and warehousing
services enumerated in SIC Major Group 42, including only:

1. Local trucking without storage in a single
municipality, contiguous municipalities, or a municipality
and its suburban areas, providing one or more of the
following services: baggage transfer; carting, by truck or
horse drawn wagon; collecting and transporting refuse,
without disposal; debris removal, carting only; delivery
service, vehicular; draying, local: without storage; farm to
market hauling; furniture moving, local: without storage;
garbage and refuse, collecting and transporting: without
disposal; hauling, by dump truck; hauling live poultry: on a
contract or fee basis: log trucking: mail carriers,
contract; motorcycle delivery service: package delivery by
truck; parcel delivery by truck; safe moving; star routes,
truck rental, with drivers: trucking timber.

2. Trucking, except local, by furnishing "over the
road" trucking service either as common carriers or under
special and individual contracts or agreements for
long-distance trucking, "over the road" trucking, and other
types of trucking that is not local.

3. Local trucking, with storage, furnishing trucking
and storage services, including household goods, in a single
municipality, contiguous municipalities, or a municipality
and its suburban areas, including only furniture moving,
local: combined with storage: household goods moving: local,
combined with storage.

4. Farm product warehousing and storage other than cold
storage, including only bean cleaning and warehousing; bean
elevators, except sales; cotton compresses and warehouses;
grain elevators, storage only; potato cellars; tobacco

82
warehousing and storage; and wool and mohair warehousing.
(See also subsection (4).)

5. Refrigerated warehousing in the storage of perishable goods, including only cheese warehouses; cold storage locker or food locker rental; frozen food locker rental; other cold storage or refrigerated warehousing; rental of locker space for the storage of food products for individual households; and provision of incidental services for processing, preparing, or packaging food for storage.
(But see paragraph (d).) and see also subsection (7).)

6. Household good warehousing and storage, without local trucking, including furniture storage and household goods warehousing and storage.

7. Warehousing and storage of a general line of goods.

8. Warehousing and storage of special products, including only automobile dead storage; fur storage, for the trade; lumber terminals (storage for hire); oil and gasoline storage caverns (for hire); petroleum and chemical bulk stations and terminals for hire; storage of goods at foreign trade zones; special storage, except farm product, cold storage, and household goods; textile warehousing; special warehousing, except cold storage, farm, and household goods; whiskey warehousing.

9. Freight trucking terminals, with or without maintenance facilities.

(b) Not included in Major Group 42, and, therefore, not exempt as motor freight transportation and warehousing (but, possibly, exempt on some other basis) are natural gas storage; field warehousing; collecting and disposing of refuse by processing or destruction of materials; removal of overburden from mines or quarries; contractors hauling dirt, rock, etc.; selling frozen food for home freezers; warehousing primarily engaged in the blending of wines; and repair of trucks.

(c) Trucking services related to sanitary services are
not exempt as motor freight transportation under this
subsection, but some such services are exempt as sanitary
services under subsection (20).

(d) Warehousing that was taxable before July 1, 1967
as leases, rentals, or licenses of real property or as
storage of tangible personal property remains taxable and is
not exempt as a service under this subsection.
(18) Passenger Transportation Services. - Passenger transportation services enumerated in paragraphs (a), (b), (c), and (d) are exempt.

(a) Local and suburban mass passenger transportation over regular routes and on regular schedules, which may involve use of one or more modes of transportation, including only airport transportation service, local; bus line operation, local; city and suburban bus line operation; elevated railway operation; local railway operation; passenger transportation, regular route between airports and terminals; street railway operation; suburban and urban railway operation; subway operation; and trolley coach operation.

(b) Ambulance service.

(c) Hearse and limousine rental, with drivers.

(d) Intercity and rural highway passenger transportation by motor vehicles, the operations of which are principally outside a single municipality, outside one group of contiguous municipalities, and outside a single municipality and its suburban areas, including only intercity bus lines; intercity motor vehicle highway passenger transportation, special services; interstate bus lines; and interurban bus lines.

(e) Not exempt as passenger transportation under this subsection are services rendered by: aerial tramways; automobile rental; cog railways; sightseeing buses; passenger transportation charter services; school buses; and terminal and service facilities for motor vehicle passenger transportation.


(19) Water, Air and Other Transportation Services.

(a) Water transportation services enumerated in subparagrapn 1. \( \text{\textbullet} \) through 13. \( \text{\textbullet} \) are exempt.

1.\( \text{\textbullet} \) Deep sea foreign transportation services of freight or passengers between the United States and foreign ports and to noncontiguous territories, enumerated in SIC Industry Number 4411.

2.\( \text{\textbullet} \) Deep sea domestic transportation services of freight or passengers between the United States mainland and Alaska, Hawaii, the Panama Canal Zone, Puerto Rico, island possessions or protectorates, noncontiguous territories, and between such places, enumerated in SIC Industry Number 4421.

3.\( \text{\textbullet} \) Coastwise transportation services of freight or passengers on the deep seas between mainland United States ports, between those located solely on the Atlantic coast and Gulf coast, enumerated in SIC Industry Number 4422.

4.\( \text{\textbullet} \) Intercoastal transportation services of freight or passengers on the deep seas between ports on the United States Atlantic and Gulf coasts on the one hand, and the United States Pacific coast ports on the other, via the Panama Canal, enumerated in SIC Industry Number 4423.

5.\( \text{\textbullet} \) Towing and tugboat services in the performance of auxiliary or terminal services in harbor areas by vessels that do not carry cargo or passengers, including docking of ocean vessels; marine towing; shifting of floating equipment within harbors; and undocking of ocean vessels, enumerated in SIC Industry Number 4454.

6. Lighterage services involved with operating lighters and other harbor vessels for transferring goods and passengers between ship and shore or from one ship to another, as described in SIC Industry Number 4455.

7.\( \text{\textbullet} \) Marine cargo handling services enumerated in SIC Industry Number 4463 from the time cargo, for or from a
vessel, arrives at shipside, dock, pier, terminal, staging
area, or in transit area until cargo loading or unloading
operations are completed, including operation and
maintenance of piers, docks, and associated including
buildings and facilities; loading vessels; ship hold
cleaning; stevedoring; terminal operation, waterfront;
unloading vessels; waterfront terminal operations; and cargo
handling operations carried on by transportation companies
and separately reported.

8. Pilot ing services.
10. Steamship leasing.
12. Ship repair and maintenance services for
vessels used in interstate or international commerce.
13. Storage of cargo at port facilities.

(b) Also exempt are freight forwarding and arrangement
of transportation of freight and cargo, enumerated in SIC
Industry Numbers 4712 and 4723, regardless of the mode of
transportation employed, as follows:

1. Freight forwarding services, undertaking the
transportation of goods from shippers to receivers for a
charge covering the entire transportation, and in turn
making use of the services of other transportation
establishments as instrumentalities in effecting delivery.
A forwarding establishment pays transportation charges to
other establishments as part of its costs of doing business
and assumes responsibility for delivery of the goods. There
are no direct relations between shippers and the
transportation establishments performing the movement.
Freight forwarding services that are exempt include customs
clearance of freight, domestic forwarding, foreign
forwarding, freight consolidation, and preparation of
shipping documents, as enumerated in SIC Industry Number
4712.
Arrangement services of transportation of freight and cargo by furnishing shipping information and acting as agents in arranging transportation for freight and cargo, when separate reports are not available for marine cargo handling operations performed by transportation arranging establishments, including only shipping agents or brokers; transportation brokers; customhouse brokers; railroad freight agencies that are not operated by railroad companies; freight rate information service; transport clearinghouse; transportation rate services; and truck transportation brokers, as enumerated in SIC Industry Number 4729.

(2) Lighterage services involved with operating lighterages and other harbor vessels for transferring goods and passengers between ship and shore or from one ship to another, as described in SIC Industry Number 4450.

(c) Also exempt are services related to processing and accessorizing of motor vehicles as defined in s. 320.01, F.S. Automobiles that are imported through Florida ports by water transportation or by international air transportation services described in SIC Major Group Number 35.

1. For purpose of this paragraph s. 320.01, F.S., defines "motor vehicle" as:

"An automobile, motorcycle, truck, trailer, semi-trailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles, or mopeds as defined in s. 316.003(2)."

As indicated in this definition, it does not include the following vehicles defined in subsection (2) of s. 316.003, F.S.:

"Every vehicle propelled solely by human power, or
any moped propelled by a pedal-activated helper motor with a
manufacturer's certified maximum rating of 1/2 brake
horsepower, upon which any person may ride, having two
tandem wheels, and including any device generally recognized
as a bicycle though equipped with two front or two rear
wheels. The term does not include such a vehicle with a
seat height of no more than 25 inches from the ground when
the seat is adjusted to its highest position or a scooter or
similar device."

2. For purposes of this paragraph, the air
transportation services described in SIC Major Group 45 are
certificated air transportation carriers (Group Number 451),
noncertificated air transportation carriers (Group Number
452), airports and flying fields (Industry Number 4582), and
airport terminal services (Industry Number 4583).

(d) Also exempt are services provided in connection
with cargo in international trade by any licensed
customhouse broker; any customs bonded warehouse, container
freight and examination station, or carman; or freight
consolidator or deconsolidator.
Sanitary and Water Supply Services.

(a) Exempt from the tax on the sale or use of services are sanitary services enumerated in SIC Group Number 4957: garbage transportation services; refuse transportation services; and debris transportation services; when such services are sold to residential households or owners of residential models, are exempt from tax. Sanitary services thus exempt include: sewerage systems, including hook-ups and such treatment processes as may be provided; the collection and disposal of refuse by processing or destruction, including acid waste collection and disposal; ashes collection and disposal; dead animal disposal; dump operation; garbage collecting, destroying, and processing; incinerator operation; radioactive waste material disposal; refuse and rubbish collection and disposal; street refuse system services; waste materials disposal at sea; malaria control and mosquito eradication; sweeping services; and vacuuming of airport runways.

Also exempt are garbage, refuse and debris transportation services enumerated in SIC Industry Number 4212, when such services are sold to residential households or owners of residential models, including collecting and transporting refuse, without disposal; debris removal, carting only; garbage and refuse, collecting and transporting without disposal.

Also exempt are septic tank cleaning services, as enumerated in SIC Industry Number 7699 when such services are sold to residential households or owners of residential models, are exempt from tax.

(d) Not exempt are:

1. The services described in paragraphs (a) through (c) when sold to others than to owners of residential households or owners of residential models; and

2. Tipping fees and other charges for the right to dispose of garbage, refuse and debris, whether related to
residential households or residential models.

(a) Also exempt are services of water supply systems in distributing water for sale for domestic, commercial, and industrial use (described in SIC Industry Number 4941) and irrigation systems services (described in SIC Industry Number 4971), including irrigation impounding reservoirs, irrigation system operation, and water distribution or supply systems for irrigation. Services in this paragraph are exempt whether related to residential households or residential models.

(f) For purposes of this subsection, residential households or residential models include apartments, condominiums, and similar multi-family dwellings that are not transient.
(21) Security and Commodity Brokerage Services. - Exempt

are security and commodity brokerage services that are
described in paragraph (a) are exempt involving the transfer of

securities or commodities.

(a) Services enumerated in SIC Major Group 62,

including:

1. Services provided by security brokers, dealers, and
flotation companies, which involve the purchase, sale and
brokerage of securities, and investment bankers services,
which involve the originating, underwriting, and
distributing issues of securities, including only bond
dealers and brokers, security distributors; security floor
traders, sale of investment certificates; general brokerage
investment firms; mutual fund selling by independent
salesmen; note brokers; oil and gas lease brokers; dealers
in oil royalties; sales of partnership shares in real estate
syndicates; security traders; security underwriters; tax
certificate dealers.

2. Services provided by commodity contracts brokers and
dealers, which involve buying and selling commodity
contracts on either a spot or future basis for their own
account or for the account of others, who are members or
associated with members of recognized commodity exchanges,
including only commodity contracts; futures commodity
brokers and dealers; and commodity contract traders.

(b) For purposes of this exemption, the term, "broker"
is as defined in subsection (7) of s. 517.021, F.S., and
"securities" is as defined in subsection (19) of services.
517.021, F.S.

(c) Taxable security and commodity brokerage services
include, but are not limited to, the following:

1. Security and commodity brokerage services that do
not involve the transfer of securities or commodities, such
as providing investment advice, managing investments, or
services as a trustee, or advisory services regarding
investments when provided by an investment advisor as defined in s. 517.021(12)(a), F.S. or any other investment service;

2. Financial services taxable under subsection (9) of this section; and

3. Accounting services or other investment services.
(22) Social Services. - Exempt are social services described in paragraph (a).

(a) Social services enumerated in SIC Major Group 83, includes;

1. Individual and family social services, including counseling, welfare, or referral services; refugee, disaster, and temporary relief services; adoption services (excluding legal services provided for a fee, as to which see subsection (25)(b)3.); adult day care services; aid to families with dependent children; senior centers; child guidance; community centers services; counseling center services; family services, including family location and marriage counseling, Big Brother and Big Sister services; homemaker services; old age assistance, public welfare center service; referral services for personal and social problems; service leagues; settlement houses, Salvation Army, etc. social service centers, Traveler's Aid Centers, and youth centers.

2. Job training and vocational rehabilitation services, including only job counseling, job or manpower training, or vocational rehabilitation and habilitation services for the unemployed, the underemployed, the handicapped, and to persons who have a job market disadvantage because of lack of education, Job skill or experience, skill obsolescences, or personal characteristics or problems; sheltered workshops, skill training; and such work experience centers as OIC, Good Will, Job Corps, Lighthouse for the Blind, etc.

3. Child day care services, engaged in the care of infants or children, or in providing prekindergarten education where medical care or delinquency correction is not a major element. Substantial educational services may or may not be provided. These services are usually designed for prekindergarten or preschool children, but may be provided for older children when they are not in school.
This type of social service is provided exclusively by child
care centers; day care centers; group day care centers; Head
Start centers; except in conjunction with schools; nursery
schools; and preschool centers.

4. Residential care, the provision of residential
social and personal care for children, the aged, and special
categories of persons with some limits on ability for
self-care, but where medical care is not a major element.

This type of social service is provided exclusively by
establishments providing 24-hour, year round, care for
children; Boys' town; children's boarding homes; children's
home; children's villages; group foster homes; halfway group
homes for persons with social or personal problems; halfway
homes for delinquents and offenders; homes for destitute men
and women; homes for children, with health care incidental;
homes for retarded, with health care incidental; homes for
the aged, with health care incidental; homes for the deaf or
blind, with health care incidental; homes for the
emotionally disturbed, with health care incidental; homes
for the physically handicapped, with health care incidental;
juvenile correctional homes; old soldiers' homes;
orphanages; rehabilitation (residential) centers, with
health care incidental; rest homes, with health care
incidental; self-help group homes for persons with social or
personal problems; and training schools for delinquents.

5. Other social services, including social services of
establishments primarily engaged in community improvement,
social change, and neighborhood development; organizations
primarily engaged in soliciting contributions on their own
account, and administering appropriations and allocating
funds among other agencies engaged in social welfare
services; services involving the prevention of criminal or
anti-social behavior, or rehabilitation services for
ex-prisoners; poverty boards; associations for retarded
children, the blind, the handicapped, etc.; community action
agencies: community chests; community development groups; councils for social agencies, exceptional children, poverty, etc.; fund raising organization not on a fee basis (united funds, etc.); health and welfare councils; neighborhood development groups; offender rehabilitation agencies; offender self-help organizations; parole offices; probation offices; self-help organizations: alcoholics and gamblers anonymous; senior citizens associations; social change associations: Urban Coalition, Urban League, etc.; social service information exchanges: alcoholism, drug addiction, etc.; United Fund councils; United Givers Funds; Youth self-help agencies; Mobilization for Youth, HARYOU Act, Pride, Inc.

(b) Any person engaged in the business of raising funds on a contract basis such as telephone solicitation is providing a taxable service.
(23) Compensation for Participation in Athletic Or Sporting Events. Forms of compensation described in paragraphs (a), (b), (c), and (d) shall be exempt.

(a) Remuneration paid to athletes for services related to their participation in athletic or sports events, including but not limited to:

1. Prizes and awards;
2. Point fund and bonus monies;
3. Other fees paid based upon individual or team performance including team sponsorship fees; and

4. Sponsorship or other monies paid to athletes or event sponsors which underwrite items 1 through 3 above but only when the funds are paid to the athlete and no part of the fund more to the benefit of the sponsor.

a. For purposes of this exemption, an "event" is a scheduled activity in which one or more athletes, as defined in subparagraph 3., is to engage in athletics or sports, as defined in subparagraph 2., at which spectators, either live or by broadcast media, are anticipated.

b. For purposes of this exemption, an "athletic or sports event" is an event engaged in by one or more athletes, as defined in subparagraph 3., that involves some movement of the human body, gives enjoyment or recreation; and requires physical strength, skill, speed, dexterity, or training in its performances, including, but not limited to: badminton, baseball, basketball, bowling, boxing, fencing, football, bowling, boxing, fencing, football, golf, gymnastics, hockey, jai alai, racing, soccer, swimming, table tennis, tennis, track, volley ball, and wrestling. The following are not athletics or sports events for purposes of determining whether their participants are athletes: chess exhibitions, games, or tournaments; circuses; and racing that does not involve humans as active participants as drivers, riders, or runners. athletes perform in public.

c. For purposes of this exemption, an "athlete" is a
human who engages as an active participant in an athletic or sporting event, including, but not limited to a player, rider of racing animals or teams of racing vehicles, an individual who participates in an athletic or sports event requiring physical strength, skill, speed, or training in its performances, including, but not limited to badminton, baseball, basketball, bowling, boxing, fencing, football, golf, gymnastics, hockey, jai alai racing, soccer, swimming, table tennis, tennis, track, volleyball, and wrestling.

The following are not athletes for purposes of this exemption and the compensation paid to the following persons for their services in this state is taxable unless there exists an employee/employer relationship: referees; umpires; coaches; managers and seconds of professional athletes; promoters; trainers; owners and operators of sport facilities; owners, trainers, and handlers of racing animals (but see paragraph (b)); circus acrobats and dancers and other stage performers (jugglers, magicians, etc.).

Example: A golf professional, for a fee, comes to a golf club to instruct its members on the finer points of the game. While undeniably a professional athlete, his services would not be exempt as related to participation in an athletic or sports event, but would be exempt as a recreational service (See (4) of this rule).

Example: The same professional is engaged to play an exhibition 18 holes. His services would then be exempt as related to participation in an athletic or sports event.

Example: The same professional participates in a golf tournament. Again, it would be related to participation in an athletic or sports event.

Example: A famous professional athlete makes a television commercial for compensation. The service would not be exempt as related to participation in an athletic or sports event.

(b) Remuneration paid to owners of greyhounds or
racehorses for participation in pari-mutuel events including
not limited to:

1. Prizes and awards; and
2. Point fund and bonus monies;

However, not exempt is any portion of such payments that may
relate to services performed in connection with such
participation.

(c) Consideration paid for the right to broadcast
athletic or sports events at which admission is charged.
However, this does not exempt charges for advertising by
those who acquire such rights.

(d) Prizes, awards, point fund and bonus monies awarded
to sports teams or individual members of teams by third
parties based on objective criteria.
(24) Real Estate Commission. - Also exempt are real
estate commissions when the conditions specified by
paragraphs (a) through (b) are met.

(a) The commission is paid to a real estate broker
registered in compliance with Florida law.

(b) The property seller affirmatively demonstrates to
the realtor who would be responsible for collecting the tax
if the service were not exempt, that at the time of signing
the initial listing contract on the real estate offered for
sale the property was assessed as homestead property
and was entitled to the homestead property exemption. These
facts can be demonstrated by an affidavit signed by the
seller. The following is a suggested affidavit to serve
this purpose:

AFFIDAVIT FOR EXEMPTION OF
REAL ESTATE COMMISSIONS

STATE OF FLORIDA )
COUNTY OF__________ )

Before me, the undersigned Notary Public, personally
appeared ________________ who, being duly sworn,
says that he/she:

1. On _______ signed a contract with ________________
   (date) (realtor)
   listing for sale the following real estate:

   ____________________________________________:
   (description)

2. On that date the property was assessed as homestead
   property pursuant to section 196.031, Florida Statutes.
   He/she was residing on said real estate. and

3. On that date he/she was entitled to the homestead
   exemption pursuant to section 196.031, Florida Statutes.

_____________________________________
(signature of seller)
Sworn to and subscribed before me this ______ day of
__________, 19__

____________________
(Notary Public)

(c) The registered real estate dealer shall retain a
 copy of this affidavit or other means of affirmative
demonstration of the required facts to support each
exemption.

(d) For application of the transition rules to real
estate commissions see Rule 12-ER-87-8(1)(b).
(25) Legal Services. Exempt are legal services that meet either of the requirements in paragraphs (a) and (b).

(a) Services rendered by an attorney to a client to the extent that the right to counsel guaranteed pursuant to either the Sixth Amendment to the United States Constitution or Article I, Section 16 of the Florida Constitution is applicable to such legal services.

1. These constitutional provisions guarantee this right only with respect to criminal prosecutions. Therefore, legal services having no relation to past, present, or potential future criminal prosecutions are not exempt as pertinent to these constitutional guarantees (although they may be exempt on some other basis).

2. Exempt as pertinent to these constitutional guarantees are:
   a. services provided in criminal trials or appeals;
   and
   b. services to a person charged with a crime before trial;

3. Not exempt are:
   a. services to a person who has not been charged with a crime to advise and assist him or her in avoiding being so charged with reference to a past act or to prepare to defend against any prosecution against him or her that may be brought; and
   b. services to advise or assist a person to avoid any future action or activity that may be a crime or that may lead to a criminal prosecution against such person.

4. Legal services pertinent to these constitutional guarantees are exempt only if:
   a. criminal charges brought in the case are dismissed; or
   b. the client is ultimately adjudicated not guilty by a court of competent jurisdiction to the extent that any further prosecution would violate the constitutional
prohibition against double jeopardy. Example: Accused pays an attorney a fee to represent him in a prosecution by the state for drug dealing. After a trial, he is found not guilty. A Federal prosecution is then brought against him based on the the same act or acts, and he is found guilty. Legal services in the state prosecution would be exempt; those in the Federal prosecution would not.

5. Legal services pertinent to these constitutional guarantees are not initially exempt; and the tax on them must be collected and remitted. The exemption is only granted pursuant to a refund of taxes previously paid on the services, after application by the service provider demonstrating the facts or events requisite for the exemption.

6. Confidentiality of attorney-client relations will be preserved to the extent provided in the Florida Evidence Code, Chapter 90, F.S., in administering this exemption see also (c) of this rule, as stated in paragraph (c).

(b) Also exempt are legal services up to $500 per person per calendar year for a natural person that relate to child support, enforcement or civil rights, or bankruptcy.

the types of matters outlined in subparagraphs 4. through 10. of this paragraph.

1. Child support includes, including services to seek favorable child support court orders, to enforce such orders, and to collect child support due.

2. Child custody, including services to obtain favorable child custody court orders, to amend such orders to enforce such orders, and to obtain and enforce visitation rights, including grandparent visitation rights.

9. Adoption, including advice and assistance in finding a suitable child or children to adopt and in legal proceedings to make an adoption or adoptions official, but excluding fees in the nature of brokerage between those who wish to adopt and those who are willing to make children
available for adoption for compensation.

4. Divorce, including advice and assistance with
divorce and separation, including drafting and negotiation
of agreements, advice on tax consequences and implications
of divorce, and other problems of terminating a marriage by
divorce or separation.

5. Guardianship, including both establishing and
termination of guardianships.

6. Juvenile cases, including representation of
juveniles in protecting their rights or in defending against
criminal prosecutions. Unlike the legal services exemption
in paragraph (a), the exemption for legal services in
juvenile cases is not dependent upon a favorable outcome.

7. Landlord/tenant relations, including services for
both landlords and tenants.

8. Mobile home rentals, including services both for
those who rent mobile home and those from who mobile homes
are rented.

9. Enforcement of civil rights includes—including—but is not limited to—services to redress or prevent actual
or alleged discrimination prohibited by:

a. Any State law, including, but not limited to Article
I of the Constitution of Florida and Part IX of Chapter 23,
Florida Statutes; and

b. Any Federal law, including, but not limited to equal
protection and other guarantees of the United States
Constitution and Federal statutes, including, but not
limited to those that prohibit discrimination in elections,
employment, housing, credit, and service by public programs;
but excluding rights of persons accused of crimes, to which
the exemption in paragraph (a) applies.

10. Recovery of past or future medical expenses,
limited to actual medical expenses paid or incurred in the
past and actual medical expenses reasonably anticipated in
the future, and excluding damages for pain and suffering.
loss of future earnings, punitive or exemplary damages, and
property damages. If the recovery represents more than one
form of damages, including medical expenses, the burden
shall be the responsibility of the attorney to establish a
reasonable basis for the apportionment of his services that
represents the exempt and nonexempt services.

11. When an attorney provides services of the type
described in subparagraph 1. through 10. during a year for a
natural person, the total compensation for which exceeds
$500, the services performed earliest for which fees
totalling $500 were charged shall be deemed those that are
exempt. When more than one attorney provided such services
for a natural person, those performed earliest for which
fees totalling $500 were charged, regardless of which
attorney or attorneys provided those services, shall be
deemed those that are exempt. No more than $500 of legal
services for one person per calendar year shall be exempt.
even where a person is provided services of more than one of
the types described in subparagraph 1. through 10. by more
than one attorney.

3. For bankruptcy see (42) of this rule.

(c) No attorney shall be required to reveal the
identity of a client to claim an exemption under this
subsection, to file a claim for refund based upon such an
exemption, or to receive a refund. However, where the
identity of the client in relation to the service for which
exemption is claimed is a matter of public record, the
attorney will not be deemed to have revealed the client’s
identity or to have violated confidentiality of
attorney-client relations when complying with any request by
the department for information of record or that may easily
be deduced from public records, where such information is
reasonably needed by the department to audit the transaction
or to act intelligently in approving or disapproving an
exemption or a claim for refund.
(d) To receive a refund the purchaser of the legal
service for which a refund is sought must file an
application for refund from the State of Florida (DR-26)
pursuant to s. 215.26, F.S. Applications for Refund from
the State of Florida (DR-26) are available, without cost,
upon written request directed to the Department of Revenue,
Supply Section, Tallahassee, Florida 32399-0100.

2. Attach a copy of the sales invoice, executed by the
seller of the service, to the application for refund, which
invoice shall contain the following information:

a. the name and address of the purchaser;

b. the description of the service rendered;

c. the date on which the purchase of the service was
made;

d. the price and amount of Florida sales tax paid for
said service; and

e. the name and place of business of the provider of
the service.

(ef) Where both exempt services and those that are not
exempt are provided a client, the burden of proof shall be
on the attorney to prove a reasonable apportionment between
exempt and non-exempt services as the basis for not
collecting the tax from the client.

(fg) The measure of the taxability of a legal service is
the total charge to the client for providing it, without any
deduction for overhead or other expenses of providing it.
Example: A Florida attorney who is on a calendar year basis
for Federal income tax purposes spends an entire calendar
year on a case, for which he receives a fee of $100,000. On
his Federal income tax return, he reports $100,000 of gross
income from his practice for the year, and deducts $30,000
for overhead (rent, employees, stationery and office
supplies, etc.) and $10,000 for expenses unrelated to
functioning of his office (travel, witness fees, printing,
etc.). He contends that these deductions from his total
$100,000 fee should also be allowed for purposes of the Florida tax on the sale or use of services. He would be unsuccessful in this contention, and the 5% tax on the legal service he provided would be based on (measured) by the total $100,000 fee. It would be so measured whether such expenses were separately stated and charged to the client and reimbursed to the attorney.

(gh) If an attorney collects a fee on a contingency fee basis in which a portion of his services were provided prior to July 1, 1987, and the attorney has made the election to remit the tax upon receipt of payment as described in 12-ER-87-7(b), the portion of the fee that represents services provided after July 1, 1987 shall be determined by multiplying the entire fee by the number of whole months occurring after July 1, 1987 until collection, divided by the number of whole months occurring from the initial representation until collection.

Example: If an attorney agrees to represent a personal injury claim on 1-1-87 and collects the fee of $5,000 on 1-1-88, $2,500 of the fee is taxable, i.e. $5,000 x 6 (months after 7-1-87 representation)/12 (months total representation).

This apportionment equation shall be presumed to be correct, and it shall be the attorney’s responsibility to demonstrate otherwise by appropriate documentation.

(hk) If an attorney collects a fee based on an hourly fee basis and a portion of his services were provided prior to July 1, 1987, and the attorney has made the election to remit the tax upon receipt of payment as described in Rule 12-ER-87-7(b), the portion of the fee that represents services provided after July 1, 1987 shall be determined by multiplying the entire fee by the number of hours of services provided after July 1, 1987, divided by the total hours of services provided.

Example: If an attorney collects a fee of $1,000 for twenty
hours of services and fifteen hours occurred after July 1, 1987, $750 of the fee is taxable, i.e. $1,000 x 15 (hours after 7-1-87)/20 (total hours).

This apportionment equation shall be presumed to be correct, and it shall be the attorney's responsibility to demonstrate otherwise by appropriate documentation.
International Banking Transaction Organization

Services. — Exempt is a service described in paragraph (a) by a banking organization defined in paragraph (b).

(a) International banking transaction that meets the definition of that term in s. 199.023(11), Florida Statutes, as follows:

"(11) 'International banking transaction' means:

"(a) The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible personal property or services;

"(b) The financing of the production, preparation, storage, or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;

"(c) The financing of contracts, projects, or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust, or other lien upon real property located in the state;

"(d) The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust, or other lien upon real property located in the state; or

"(e) Entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraph (d).

"(12) "Abroad" means in one or more foreign nations; in the colonies, dependencies, possessions, or territories of a foreign nation or of the United States; or in the Commonwealth of Puerto Rico."

(b) A "banking organization" is defined as follows by s. 199.023(9), Florida Statutes:

"(9) "Banking organization" means:

"(a) A bank organized and existing under the laws
of this state;

"(b) A national bank organized and existing pursuant to the provisions of the National Bank Act, 12 U.S.C. ss. 21 et seq., and maintaining its principal office in this state;

"(c) An Edge Act corporation organized pursuant to the provisions of s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq., and maintaining an office in this state;

"(d) An international bank agency licensed pursuant to the laws of this state;

"(e) A federal agency licensed pursuant to ss. 4 and 5 of the International Banking Act of 1978 to maintain an office in this state;

"(f) A savings association organized and existing under the laws of this state; or

"(g) A federal association organized and existing pursuant to the provisions of the Home Owners' Loan Act of 1933, 12 U.S.C. ss. 1461 et seq., and maintaining its principal office in this state."
(27) Travel Agents.

Exempt are services provided by travel agents related to
arrangement of transportation and accommodations. For
purposes of this exemption, a "travel agent" is a person not
operated or controlled by a transportation company who is
primarily engaged in furnishing travel information, acting
as an agent in arranging tours and transportation for
passengers or acting as an independent ticket agency for
transportation establishments.
(28) Research and Development Services. - Research and development services described in s. 212.052(1)(a), Florida Statutes, are exempt. That definition is as follows:

"(a) The term "research or development" means research which has one of the following as its ultimate goal:

"1. Basic research in a scientific field of endeavor.

"2. Advancing knowledge or technology in a scientific or technical field of endeavor.

"3. The development of a new product, whether or not the new product is offered for sale.

"4. The improvement of an existing product, whether or not the improved product is offered for sale.

"5. The development of new uses of an existing product, whether or not a new use is offered as a rationale to purchase the product.

"6. The design and development of prototypes, whether or not a resulting product is offered for sale.

"The term 'research or development' does not include ordinary testing or inspection of materials or products used for quality control, market research, efficiency surveys, consumer surveys, advertising and promotions, management studies, or research in connection with literary, historical, social science, psychological, or other similar nontechnical activities."
(29) Religious Services. - Exempt are religious services provided by religious organizations, religious institutions, or religious leaders. However, services that, though altruistic and meritorious, are not performed by religious organizations, institutions, or leaders are taxable unless exempt on some other basis. Also exempt are sales of services by any non-profit religious organization described in SIC Industry Number 866 including churches, convents, monasteries and religious schools operated by religious organizations, when the sales are provided in carrying out the organizations customary non-profit religious activity. However, services such as educational, hospital, publishing or reading room services performed by such religious organizations or leaders and services that, though altruistic and meritorious, are not performed by such religious organizations or leaders are taxable unless exempt on some other basis.
(30) Interstate Telecommunication Services. - Exempt is
Any service performed by or through interstate
telecommunications by a holder of a direct pay permit issued
pursuant to s. 212.05(1)(e), F.S. is exempt.
(31) Taxicab Services. - Taxicab services described in SIC Industry Number 4121 are exempt.

(a) However, services of taxicab associations and similar organizations which do not operate taxicabs, but supply maintenance and repair services to their members, are taxable under SIC Industry Number 4172.

(b) Thus exempt in the furnishing of passenger transportation by automobiles not operated on regular schedules or between fixed terminals.

(c) Not exempt are taxicab services furnished by other modes of transportation, such as water taxies and helicopters.
(32) **Franchise Payments.** - Exempt from tax are payments and contributions described in paragraphs (a) and (b).

(a) Payment by a franchisee, or receipt by a franchisor, of royalties for use of intangible property, including, but not limited to, use of a trade name or trademark or franchise right to use or sale patented products or copyrighted printed material.

(b) Contributions to a marketing fund or account administered by the franchisor, made pursuant to a franchise agreement, which contributions are used solely for the purchase of advertising benefiting franchisees or for the administration of such fund or account.
(33) Data Processing Services for Financial Institutions. - Data processing services are exempt when, where the requirements of paragraphs (ab) through (de) are met, and they are performed for a financial institution by a service corporation of a financial institution. As used in this subsection, the term "financial institution" means any savings and loan association or savings bank organized under the Laws of Florida, of the United States, or any of the other states, described in SIC Major Group 61 which includes establishments engaged in extending credit in the form of loans.

(a) Credit agencies included in SIC Major Group 61 are:

1. Rediscount and financing institutions for credit agencies (other than banks) not primarily associated with agricultural credit, including Federal Home Loan banks, national mortgage associations, such as GNMA, FNMA, FHA, and rediscounting and financing for non-agricultural credit agencies, except banks:

2. Rediscount and financing institutions for credit agencies (other than banks) primarily associated with agricultural credit, including Federal Farm Mortgage Corporation and Federal intermediate credit banks (agricultural credit):

3. Savings and loan associations, including Federal Savings and Loan Associations; state annuity savings institutions and state savings and loan associations that are insured by the Federal Savings and Loan Insurance Corporation, state annuity savings institutions that are not insured but are members of the FHLB, state savings and loan associations that are not insured but are members of the FHLB, state annuity savings institutions that are neither insured nor members of the FHLB, and state savings and loan associations that are neither insured nor members of FHLB.
4. Agricultural credit institutions, which are primarily engaged in extending agricultural credit, including agricultural loan companies, banks for agricultural cooperatives, Commodity Credit Corporation, agricultural credit institutions, farm mortgage companies, Farmers Home Administration, Federal land banks, livestock loan companies, and production credit associations.

5. Federally chartered and state-chartered credit unions.

6. Industrial loan companies not engaged in deposit banking, including industrial loan "banks," industrial loan companies, and Morris plan companies.

7. Licensed small loan lenders, including licensed small loan lenders and licensed small loan personal finance companies.

8. Installment sales finance companies, which are primarily engaged in financing retail sales made on the installment plan, but some of which are also engaged in financing wholesale sales on the installment plan, including acceptance corporations and dealers. Automobile loans (may include automobile insurance), financing of automobiles, airplanes, furniture, appliances, etc. and installment sales finance, other than banks.

9. Miscellaneous personal credit institutions, including Aias, remedial loan societies, and mutual benefit associations.

10. Short-term business credit institutions, which are establishments primarily engaged in advancing cash to business enterprises for relatively short periods, including business credit institutions, short-term credit card service, collection by central agency, direct working capital financing, factors of commercial paper, financing of dealers by motor vehicle manufacturers' organizations, buying of installment notes, installment paper dealer.
mercantile financing, purchasers of accounts receivable and
commercial paper, purchase and sale of trust deeds, and
working capital financing.

11. Miscellaneous business credit institutions, which
are primarily engaged in furnishing long-term general and
industrial credit, including the finance leasing of
automobiles, trucks, and machinery and equipment, including
car or auto finance lending, Export-Import Bank, general and
industrial loan institutions, investment companies, small
business loan institutions, general and industrial,
machinery and equipment finance leasing, pari-mutuel
totalizator equipment finance leasing and maintenance, and
truck finance leasing.

12. Mortgage bankers and loan correspondents, which are
establishments primarily engaged in originating mortgage
loans, selling mortgage loans to permanent investors and
servicing these loans and may also provide real estate
construction loans, including bond and mortgage companies;
loan correspondents, mortgage bankers, mortgage brokers,
using own money and urban mortgage companies.

13. Loan brokers, which are establishments primarily
engaged in arranging loans for others, which operate mostly
on a commission or fee basis and do not ordinarily have any
continuing relationship with either borrower or lender,
including farm or business loan agents, farm or business
loan brokers, loan agents, loan brokers, and mortgage
brokers, arranging for loans but using money of others.

(ab) The service corporation is organized pursuant to s.
545.74, Rules of the Federal Home Loan Bank Board.

(bc) All capital stock of the service corporation may be
purchased by only savings and loan associations and savings
banks having operations in this state.

(cd) No savings and loan association or savings bank
owns, or may own, more than 10 percent of the service
corporation's outstanding capital stock.
Every eligible savings and loan association or savings bank shall own an equal amount of capital stock or shall, on such uniform basis as the service corporation may determine, own an amount of such stock equal to a stated percentage of its assets or savings capital at the time the stock is purchased, or an amount of such stock equal to its pro-rata share of accounts serviced.
(34) Personal Laundry Services Sold to Residents of Nursing Homes.

(a) Personal laundry services sold to residents of nursing home facilities, hospices and adult congregate living facilities licensed under Part I of Chapter 400, F.S. are exempt from tax, provided such resident furnishes the service provider a statement declaring he is a resident of a facility licensed under Chapter 400, F.S.

(b) A nursing home facility means any institution, building, residence, private home, or other place, which undertakes to provide for a period exceeding 24 hour nursing care, personal care, or custodial care for 3 or more persons not related to the owner, who by reason of illness, physical infirmity, or advanced age require such service, but does not include any place providing care and treatment primarily for acutely ill. However, a facility offering services for fewer than 3 persons is also required to be licensed if it holds itself out to the public as an establishment which regularly provides such services.

(c) A hospice means an autonomous, centrally administered, nonprofit, as defined in Chapter 617, medically directed, nurse-coordinated program providing a continuum of home, outpatient, and homelike inpatient care for the terminally ill patient and his family. It employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available 24 hours a day, 7 days a week, and is provided on the basis of need regardless of inability to pay.

(d) An adult congregate living facility hereinafter referred to as "facility," means any building or buildings, section of a building, or distinct part of a building, residence, private home, boarding home, home for the aged,
or other place, whether operated for profit or not, which
undertakes through its ownership or management to provide,
for a period exceeding 24 hours, housing, food service, and
one or more personal services for four or more adults, not
related to the owner or administrator by blood or marriage,
who require such services. A facility offering personal
services for fewer than four adults is within the meaning of
this definition if it formally or informally advertises to
or solicits the public for residents or referrals and holds
itself out to the public to be an establishment which
regularly provides such services.
(35) Industrial Machinery and Equipment. - Exempt are services used directly and exclusively for maintenance, retrofitting, repair, or replacement of industrial machinery and equipment at fixed locations, which machinery and equipment is used to manufacture, process, compound, produce, fabricate, or prepare for shipment items of tangible personal property for sale.

(a) For purposes of this exemption, "industrial machinery and equipment" is as defined in s. 212.08(5)(b)6.a., Florida Statutes, as follows:

"Industrial machinery and equipment" means "section 38 property" as defined in s. 48(a)(1)(A) and (B)(i) of the Internal Revenue Code, provided "industrial machinery and equipment" shall be construed by regulations adopted by the Department of Revenue to mean tangible property used as an integral part of the manufacturing, processing, compounding, or producing for sale of items of tangible personal property. Such term includes parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph."

(b) No additions to, amendments of, or repeal of the cited provisions of the Internal Revenue Code enacted after April 23, 1987, can be considered as affecting this definition.

(c) This exemption only applies to the tax on such services in excess of $100,000 of tax during each calendar year.

(d) This exemption does not apply to services relating to machinery or equipment purchased or used by electric utility companies, communications companies, phosphate or other solid minerals severance, mining, or processing operations, oil or gas exploration or production operations, printing or publishing firms, any firm subject to regulation by the Division of Hotels and Restaurants of the State Department of Business Regulation, or any firm which does
not manufacture, process, compound, or produce for sale items of tangible personal property.

(e) This exemption does not apply to the purchase of services related to industrial machinery and equipment when such services are included as a part of the purchase of tangible personal property or were subject to tax as part of a sale prior to July 1, 1987; and this exemption does not expand the exemptions provided in s. 212.08(5)(b)1. or 2. (relating to sales of industrial machinery and equipment) beyond their meaning prior to July 1, 1987.
Oil and Gas Field Services. - Exempt are oil and gas field services described in paragraph (a) and pipeline transportation services described in paragraphs (b) and (c).

(a) Oil and gas field services enumerated in SIC Group Number 138. Included in such services are only:

1. Directional drilling of oil and gas wells on a contract basis; redrilling oil and gas wells on a contract basis; reworking oil and gas wells on a contract basis; "spudding in" oil and gas wells on a contract basis; and well drilling - gas, oil, service and water intake on a contract basis.

2. Oil and gas field exploration services, including aerial geophysical exploration for oil and gas on a contract basis; exploration for oil and gas fields on a contract basis; geological exploration for oil and gas fields on a contract basis; geophysical exploration for oil and gas fields on a contract basis; and seismograph surveys on a contract basis;

3. Other oil and gas field services, including acidizing wells on a contract basis; bailing wells on a contract basis; building oil and gas well foundations on site on a contract basis; cementing oil and gas well casings on a contract basis; chemically treating wells on a contract basis; cleaning lease tanks, oil field, on a contract basis; cleaning wells on a contract basis; derrick building, repairing, and dismantling: oil and gas well - contract; dismantling of oil well rigs (oil field service) on a contract basis; erecting lease tanks, oil field, on a contract basis; excavating slush pits and cellars on a contract basis; "fishing" for tools, oil and gas fields, on a contract basis; gas compressing (natural gas) at the fields on a contract basis; gas well rig building, repairing, and dismantling on a contract basis; grading oil and gas well foundations on a contract basis; hydraulic
fracturing wells on a contract basis; impounding and storing salt water in connection with petroleum production; lease tanks, oil field, erecting, cleaning, and repairing on a contract basis; logging wells on a contract basis; mud service, oil field drilling on a contract basis; oil sampling service for oil companies on a contract basis; oil well logging on a contract basis; perforating well casings on a contract basis; pipe testing—oil field service on a contract basis; plugging and abandoning wells on a contract basis; pumping of oil and gas wells on a contract basis; removal of condensate gasoline from field (gathering) lines, contract; running, cutting, and pulling casings, tubes and rods, oil and gas wells; servicing oil and gas wells on a contract basis; shooting wells on a contract basis; shot-hole drilling service (oil field) on a contract basis; surveying wells on a contract basis; and swabbing wells on a contract basis.

(b) Pipe line services, enumerated in SIC Group Number 461, which are services related to the pipe line transportation of petroleum and other commodities, except natural gas (as to which, see paragraph (c)), including crude petroleum pipe lines (excluding field gathering lines); refined petroleum pipe lines; gasoline pipe line common carriers; coal and slurry pipe line operations; and pipe line operations other than petroleum and natural gas pipe lines.

(c) Gas production and distribution services enumerated in SIC Group Number 492.
(37) Rail Transportation. - Exempt are rail transportation services enumerated in SIC Major Group 40, including line-haul railroad, and switching and terminal establishments, including only those described in paragraphs (a) through (b).

(a) Line-haul operating railroads, including only electric railroads, steam railroads, interurban railways, and line-haul operating railroads.

(b) Switching and terminal establishments, which are primarily engaged in the furnishing of terminal facilities for rail passenger or freight traffic for line-haul service, and in the movement of railroad cars between terminal yards, industrial sidings, etc., and which do not necessarily operate any vehicles themselves, but may operate the stations and terminals, including only belt line railroads, logging railroads, railroad terminals, and stations operated by railway terminal companies.
(38) **Beauty and Barber Shops Services.** - Exempt are services described in paragraphs (a) and (b).

(a) Services of beauty shops, which are establishments engaged in furnishing beauty services enumerated in SIC Group Number 723, including only beauty shops; beauty culture schools when providing beauty shop services; hairdressers; and combined beauty and barber shops.

(b) Services of barber shops, which are primarily engaged in furnishing barber and men's hair styling services enumerated in SIC Group Number 724, including only barber shops, men's hair stylists, and barber colleges when providing barber shop services.
(39) Employee Leasing Services. - To the extent specified in paragraph (b), employee leasing services described in paragraph (a) are exempt.

(a) Personnel supply services enumerated in SIC Industry Number 7369, of providing the personnel to perform a range of services in operating specified facilities, or which provide a number of different continuing services on a contract or fee basis, within another business (or government) establishment or installation, including base maintenance (providing personnel on continuing basis) and facilities management, except computers.

(b) This exemption only applies to the extent that the charge for such services consists of payroll and related employment benefits paid or provided to the leased employees. The portion of the charge that exceeds payroll and related employment benefits paid or provided to the leased employees is taxable.

(c) Not included in SIC Industry Number 7369, and thus not eligible for this exemption but taxable as business services under SIC Major Group 73 are:

1. Employment agencies;

2. Temporary help supply services, such as fashion show service, labor pools, manpower pools, modeling service, and usher service;

3. Establishments primarily providing one specialized service, such as janitorial service, guard service, management service; secretarial service, or both management and staff to operate a business.
(40) **News Services.**

Also exempt are news services enumerated in SIC Group 735, as follows:

- (a) **News correspondents, independent;**
- (b) **News features (syndicates, etc.);**
- (c) **News pictures, gathering and distributing;**
- (d) **News reporting services for newspapers and periodicals;**
- (e) **News syndicates—nonprofit (membership);**
- (f) **News syndicates—commercial (nonmembership);**
- (g) **News ticker service; and**
- (h) **Press services.**
(41) Amusement, Recreational, and Cultural Services. —

Also exempt are amusement and recreation services
described in paragraphs (a) through (i), and cultural
services described in paragraph (j) when establishments
engaged in providing such services receive payment of a
participation fee or admission charge.

(a) Services related to "live" theatrical
presentations, enumerated in SIC Industry Number 7922,
including:

1. Road companies;
2. Stock companies;
3. Summer theatres;
4. Burlesque houses;
5. Allied services, such as casting agencies; booking
agencies for plays, artists, and concerts; scenery;
lighting; other equipment services; and theatrical ticket
agencies;
6. Ballet production;
7. Concert management services;
8. Costume design;
9. Employment (theatrical, radio, and television)
agencies;
10. Legitimate theater producers;
11. Opera companies;
12. Radio and television program producers;
13. Rental of theatrical scenery;
14. Repertory or stock companies, theatrical;
15. Scenery design, theatrical;
16. Television program, including commercials,
producers;
17. Amateur theatrical companies;
18. Theatrical equipment rental; and
19. Vaudeville companies.

(b) Bands, Orchestras, Actors, and Other Entertainers
and Entertainment Groups, enumerated in SIC Industry Number
including:

1. Actors;
2. Classical music groups or artists;
3. Concert artists;
4. Concert organizations;
5. Dance bands;
6. Entertainers;
7. Entertainment groups;
8. Entertainers for restaurants, clubs, radio, and TV;
9. Jazz music groups or artists;
10. Popular music groups or artists;
11. Symphony orchestras;
12. Magicians;
13. Orchestras.

(c) Bowling (duck pins, ten pins, etc.) alleys and billiard and pool parlors, as enumerated in SIC Group Number 793.

(d) Professional Sports Clubs and Promoters, as enumerated in SIC Group Number 794, including:

1. Sports promotion of arenas, boxing, wrestling, athletic field operation;
2. Operators and promoters of professional and semiprofessional sports (baseball, basketball, football, ice hockey, soccer, etc.) clubs;
3. Managers of individual professional athletes;
4. Promoters of sports events;
5. Sports field operation; and
6. Stadiums (sports promotion).

(e) Racing, including track operation, as enumerated in SIC Industry Number 7948, including:

1. Dragstrip operation;
2. Horses, breeding and racing;
3. Jockeys, horse racing;
4. Kennels, dog racing;
5. Motorcycle racing;
6. Race car drivers and owners;
7. Race horse owners;
8. Race track operation: horse, dog, auto, etc.
9. Operation of racing stables;
10. Speedway operation; and
11. Stock car racing.

(f) Public Golf Courses, enumerated in SIC Industry Number 7992, open to the general public on a fee basis, including both nonmembership golf clubs and public golf courses.

(g) Amusement parks, enumerated in SIC Industry Number 7996, kiddle parks, etc., which group together and operate in whole or in part a number of attractions, such as mechanical rides, amusement devices, refreshment stands, and picnic grounds, including:

1. Amusement centers and parks (not fairs, circuses, or carnivals);
2. Amusement piers; and
3. Theme parks (amusement).

(h) Membership sports and recreation clubs, enumerated in SIC Industry Number 7997, which are sports and recreation clubs restricted to use by members and their guests, including:

1. Athletic clubs and gymnasiums;
2. Aviation clubs;
3. Baseball clubs—little leagues;
4. Bathing beaches, membership;
5. Beach clubs, membership;
6. Boating clubs, membership;
7. Bridge clubs, membership;
8. Country clubs, membership;
9. Flying fields, maintained by aviation clubs;
10. Golf clubs, membership;
11. Gun clubs, membership;
12. Hunt clubs, membership;
13. Recreation and sports clubs, membership;
14. Riding clubs, membership;
15. Shooting clubs, membership;
16. Swimming clubs, membership;
17. Tennis clubs, membership;
18. Yacht clubs, membership.

(i) Miscellaneous Amusement and Recreation Services enumerated in SIC Industry Number 7999, including:

1. Aerial trams, amusement or scenic;
2. Amusement concessions;
3. Amusement rides;
4. Animal and reptile exhibits, commercial
5. Animal shows, in circuses, fairs, and carnivals;
6. Aquariums, commercial;
7. Art galleries, commercial;
8. Astrologers;
9. Baseball instruction schools;
10. Basketball instruction schools;
11. Bath houses, independently operated;
12. Bathing beaches, nonmembership;
13. Boat rental, pleasure;
14. Boats, party fishing; operation of
15. Bookies;
16. Bookmakers, race;
17. Botanical gardens, commercial;
18. Bowling instruction;
19. Bridge clubs, nonmembership;
20. Bridge instruction;
21. Cable lifts, amusement or scenic, operated separately from lodges;
22. Canoe rental;
23. Carnival operation;
24. Cave operation;
25. Circus companies;
26. Concession operators, amusement devices and rides;
27. Day camps;
28. Exhibition operation;
29. Exposition operation;
30. Fairs, agricultural; operation of
31. Fireworks display service;
32. Fishing lakes, operation of
33. Fortune tellers;
34. Gambling establishments, not primarily operating
coin-operated machines;
35. Gambling machines, except coin-operated; operation
of;
36. Game parlors (not coin operated);
37. Games, teaching of;
38. Go cart raceway operation;
39. Go cart rentals;
40. Golf courses, miniature; operation of;
41. Golf driving ranges;
42. Golf, pitch-n-putt;
43. Golf professionals, not operating retail stores;
44. Gymnasiums, operation of; nonmembership;
45. Horse shows;
46. Houseboat rentals;
47. Hunting guides;
48. Judo instruction;
49. Karate instruction;
50. Motorcycle rental;
51. Museums, commercial;
52. Natural wonders, tourist attraction; commercial;
53. Observation tower operation;
54. Off-track betting;
55. Pack trains, for amusement;
56. Parachute training (for pleasure);
57. Phrenologists;
58. Physical culture schools (gymnasiums);
59. Picnic grounds operation;
60. Ping pong parlors;
61. Planetaria, commercial;
62. Rental of beach chairs and accessories;
63. Rental of bicycles;
64. Rental of golf carts;
65. Rental of twoboats and canoes;
66. Rental of saddlehorses;
67. Reptile or animal exhibits, commercial;
68. Riding academies and schools;
69. Riding stables;
70. Scenic railroads for amusement;
71. Shooting galleries;
72. Skating instruction, ice or roller;
73. Skating rink operation, ice or roller;
74. Slot car race tracks;
75. Sporting goods rental;
76. Sports instructors, professional;
77. Sports professionals;
78. Swimming pools;
79. Tennis clubs, nonmembership;
80. Tennis courts, outdoor and indoor; operation of nonmembership;
81. Tennis professionals;
82. Ticket sales offices for sporting events, contract;
83. Tourist attractions, natural wonder, commercial;
84. Tourist guides;
85. Trampoline operation;
86. Wax figure exhibitions;
87. Yoga instruction; and
88. Zoological gardens, commercial.
(i) Noncommercial Aquariums, Arboreta, Art Galleries, Botanical Gardens, Museums, Planetaria, and Zoological Gardens, enumerated in SIC Major Group 84.
(k) The statutory exemption from the tax on the sale or use of services on which this subsection is based does not exempt:

1. Admission charges from the tax on admissions levied by s. 212.04, F.S. Example: There is a live theatrical performance in a Florida city, for which actors are engaged through casting agencies; independent contractors who are expert in scenery, lighting, and other equipment services are compensated and specialists in other theatrical services are used. While this exemption is an exemption of these services from the tax on the sale or use of services, it is not an exemption from the tax on admissions to the performance.

2. Membership fees from the tax on admissions levied by s. 212.04, F.S. Example: A golf club owns a golf course to which its members whose membership fees are current can be admitted without further charge. While membership dues and fees are exempt from the tax on the sale or use of services, they are not exempt from the tax on admissions levied by s. 212.04, F.S.

3. Sales of tangible personal property from the tax on sales levied by s. 212.05, F.S. Example: It is necessary to purchase tangible personal property to provide a service that is exempt under this subsection from the tax on the sale or use of services. This does not exempt the purchase of that property from the tax on sales of tangible personal property.

4. Use of coin-operated amusement devices.

Nothing contained herein shall be construed as exempting any form of advertising.
(42) Bankruptcy Proceedings.

Any services provided and paid for pursuant to court order in a bankruptcy proceeding including but not limited to:

1. Legal fees;
2. Trustee fees; and
3. Appraisal fees are exempt from tax.
(43) Household Utility Services.—

(a) Also exempt are household utility services sold to residential households or owners of residential models by utility companies which pay the gross receipts tax imposed under s. 203.01, F.S., or by liquefield petroleum gas companies.

(b) Such services are exempt regardless of whether such sales of services are separately metered and billed direct to the residents or are metered and billed to the landlord.

(c) If any part of the services is used for a nonexempt purpose, the entire sale is taxable. Example: A householder decides to establish a cabinet making business in his home, and uses electricity to operate the machinery used in that business. The entire sale of electricity to his home is no longer exempt.
1. Registration Fees.

Also exempt are convention and conference registration fees.
(45) Satellites, Etc.-

Also exempt are transportation services by satellite or
launch vehicles, whether sponsored by governmental or
non-governmental entities.
(46) Impact Fees, Etc. -

Also exempt are impact fees and charges related to idle plant capacity for access to sewerage utilities and utilities subject to the gross receipts tax imposed pursuant to Chapter 203, F.S.
(47) Emergency Road Services.—

Also exempt are emergency road services, but only when
the total consideration for the service is $10 or less. If
the consideration for the service is more than $10.00, the
transaction is fully taxable.
Construction Support Services. — Exempt are

construction support services purchased by a provider of
construction support services in furtherance of a contract
for such services. For purposes of this Rule "construction
support services" means architectural, engineering,
drafting, surveying, land planning, landscape design, and
interior design services, when such services directly relate
to the construction, alteration, improvement, or repair of
real property. This exemption shall apply only if:

(a) The purchaser of the service buys the service
pursuant to a written contract with the seller and such
contract identifies the client or customer for whom the
purchaser is buying the service;

(b) The purchaser of the service identifies the seller
of the service purchased in his charge for the service on
its subsequent sale; and

(c) The service will be taxed in a subsequent sale,
unless otherwise exempt.
(49) Newspaper Delivery Services.

Also exempt are newspaper delivery services provided to the publisher or printer of a newspaper. This exemption applies only when the delivery service is provided by an independent contractor. When provided by an employee of the publisher or printer of a newspaper, the service is exempt as a service by an employee (See Rule 12-ER-87-11(2)).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 2 and 3, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-13  Financial Services.

(1)(a) A "financial institution" means those institutions referred to by SIC Major Groups 60 and 61 of the 1972 Standard Industrial Classification Manual. This definition is not applicable to Rule 12-ER-87-12(33).

(b) SIC Major Groups 60 and 61 of the 1972 Standard Industrial Code Manual include, but are not limited to, establishments, such as:

1. Commercial banks;
2. Credit services;
3. Mortgage brokers; and
4. Personal finance companies.

(2)(a) Services provided by a financial institution are exempt, except as provided in paragraph (b).

(b) Taxable Services provided by financial institutions except when the provider is a nonresident entity or nonresident person as defined in Rule 3c-15.003, F.A.C., as it was effective on July 1, 1987 include the following:

1. The rental charge on safety deposit boxes and the use of depository bag;
2. The issuing of traveler's checks, cashier's checks, bank drafts, or money orders;
3. The charges for copies of documents;
4. The charges for stop payment and return checks, unless due to insufficient funds;
5. The charges for service as personal representative of estates of decedents (except as provided in 12-ER-87-11(2)(d));
6. The charges for credit information and reporting services;
7. The fees charged for overdrafts, collections (as
enumerated in 12-ER-87-11(9)(b)13., hold mail and

guardianship;

8. The charges for use of night deposit services
and vaults;

9. The charges for preparation of individual tax
returns and accounting services;

10. The charge for credit card and charge card
membership; and

11. The charge for data processing, not otherwise
exempt (See 12-ER-87-11(33)), except check processing and
check clearing services. Check processing and check
clearing service are considered exempt pursuant to this
subsection.

(3) The charge made to customers which includes both
taxable and exempt services, the total charge is taxable
unless the exempt service is separately stated.

Example: When a bank charges its customers a single price
per month which includes check processing, issuance of
travelers checks, issuance of cashier's checks, and other
services the total charge is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
Florida.

History - New 7-1-87.
12-ER-87-14 Insurance Services.

(a) The only payments for insurance that are taxable are premiums for title insurance that are in excess of 110 percent of the risk premium rate promulgated pursuant to s. 627.782, F.S., by the Department of Insurance. That Department's rules are in Chapter 4-21, Florida Administrative Code. All other consideration for insurance is exempt from the tax on sale or use of services (See Rule 12-ER-87-11(14)).

(b) Annuities are exempt as insurance.

(c) Also exempt are insurance services of agents and brokers and of insurance service companies. (See Rule 12-ER-87-11(14)(a) and (b)).

(d) Taxable as services, not exempt as insurance, are transactions that, though involving some assumption of risk, are, considered as a whole, more in the nature of sales or uses of services than insurance transactions (See Rule 12-ER-87-11(14)(f)).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

12-ER-87-15 Security and Commodity Broker Services.

(1)(a) Security and commodity broker services are exempt, except as provided in paragraph (b).

(b) The following security and commodity broker services are subject to tax.

1. The service of a person who advises on investments, but who is not an investment advisor within the definition of subsection (12) of section 517.021, F.S., in advising on investments in tangible or intangible personal property or real property:

2. A quotation service;

3. An exchange clearing house service;

4. Services relating to commitment of money or property in expectation of receiving an economic benefit not involving securities;

5. Accounting services.

(2) Expenses in effecting the transaction are taxable as part of the entire sales price of the sale of service as defined in section 212.02(21) F.S.

(3) This exemption shall not be construed to exempt any financial service taxable under other sections, or any other investment service which does not involve the transfer of securities or commodities, such as providing investment advice managing investments, or services as a trustee except for investment advisory services provided by a financial institution.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
Brokerage Services.

(1) Compensation for services relating to sales, leases, licenses, and other transactions concerned with real estate, housing, and business brokerage are taxable. Such taxable services include, but are not limited to, those listed in (a) through (h).

(a) Services of a broker, as that term is defined in paragraph (c) of section 475.01(1), Florida Statutes, which include appraising, auctioning, selling, exchanging, buying, or renting, or offering, attempting, or agreeing to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises, business opportunities, or real property or any interest concerning the same, including mineral rights or leases.

(b) Services of a managing entity, which manages condominiums, timesharing property, office buildings, apartments, or other types of housing or property.

(c) Services of marketers and marketing consultants, who formulate and implement marketing strategies and techniques.

(d) Services of a receiver, whether or not appointed by a court.

(e) Services of an escrow agent, whether such services are compensated by fees for services or by investment income on funds of another or others that are held by it in escrow.

(f) Services of a surveyor.

(g) Services of an investment advisor, who advises on investments in real estate or real estate and other types of property.

(h) Title services, such as, but not limited to, preparation of abstracts of title, title searches, etc.
(2) Compensated services to which this subsection
applies are taxable apart from and in addition to any tax
collectable by the service provider for himself as a dealer
or for another as a dealer on rentals, as to which see Rule
12A-1.061, and 12A-1.073, F.A.C.

(3) Real estate commissions are exempt only when the
property seller affirmatively demonstrates to the realtor
responsible for collecting the tax that at the time of
signing the initial listing contract on the real estate
offered for sale the property was assessed as
seller resided thereon and was entitled to the homestead
property exemption pursuant to s. 196.031, F.S. (See
12-ER-87-11(24).

Specific Authority 212.17(6). 212.18(2) F.S.: Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
Florida.

History - New 7-1-87.
12-ER-87-17   Lobbying Services.

(1) Effective July 1, 1987, persons engaged in the business of performing or providing, for compensation, activities to encourage the passage, defeat, or modification of legislation or to influence the decision of an individual legislator, a legislative committee or subcommittee, or entire legislative body, or representing for compensation on a regular basis an organization which has as one of its purposes the encouragement of the passage, defeat or modification of legislation or influencing legislation decisions, are performing or providing a taxable service. The tax also applies to a retainer fee paid for such lobbying service.

(2) The tax will apply to the total consideration paid for such lobbying service, even though the lobbying service charge includes payment of travel, telephone or other often related expenses whether as an included or separate item.

(3) Tax also applies to purchases by persons providing the taxable lobbying service including, but not limited to paper, supplies, office equipment, motor vehicles, telephones, meals, hotel and motel rentals, etc.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-EX-87-18   Security and Detective Services.

(1) Persons engaged in the business of providing security or detective services are performing taxable services.

(b) Security service are characterized as services provided by any person who is engaged in the business of providing a service, the purpose of which is to protect property from theft, vandalism or destruction; or individuals from physical attack or harassment is providing a "security service." Persons engaged in the following services are providing a taxable security service; the list is not exclusive: Rental of guard dogs, burglar and fire alarm systems; providing security guards, body guards and mobile patrols; and protection of computer systems against unauthorized penetration.

(c) Detective services are characterized as services provided by any person who engages in the business of providing a service for the purpose of obtaining information regarding any one or more of the following matters are engaged in the business of providing a "detective service", and their services are subject to tax: investigation of crimes or wrongs done or threatened; the habits, conduct, movements, whereabouts, associations, transactions, or reputation or character of any person; the credibility of witnesses or other persons; the investigation or recovery of lost or stolen property, or the cause, origin, or responsibility for fires, accidents, or injuries to property; the investigation of the truth or falsity of any statement or representation; the detection of deception; or the business of securing evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases. The services of a peace officer engaged privately in security or detection work are also subject to tax.
Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-12  Taxable Services.

(1)(a) The services enumerated in paragraphs (2)(a) through (2)(gg) shall not be construed as a comprehensive list of taxable services but rather a list of some of the services referred to by the 1972 Standard Industrial Manual classification as published by the Executive Office of the President, Office of Management and Budget, which services are totally or partially subject to tax under Chapter 212, as amended by Chapter 87-6, Laws of Florida.

(b) Unless a provision of Part I of Chapter 212, F.S., clearly provides otherwise, references to the SIC Code are intended to describe activities or services and not establishments. Such references shall not be construed to tax or exempt a service solely because it is performed by a person in a referenced establishment. Neither shall such references be construed to preclude taxation or an exemption for a service solely because it is performed by a person not in a referenced establishment.

(2) Emergency Rules 12-ER-87-13 through 12-ER-87-48 provide additional details regarding some of the services listed below:

(a) Agricultural services.

1. Animal specialty services—(Industry Number 0752—See 12ER-87(11)(3)), unless the services relate to agricultural products as defined in s. 618.01(1); and

2. Landscape and horticultural services (Group Number 078). (See 12-ER-87-22).

(b) Metal mining services—(Group Number 108), which includes, but is not limited to:

1. Boring test holes services;

2. Exploration metal services; and

3. Draining or pumping services.

(c) Non metallic mineral services—(Group Number 148),
which includes, but is not limited to:

1. Boring services;
2. Draining and pumping services;
3. Mine development services; and
4. Strip mining services.

(d) Building construction services - See 12-ER-87-31)

below (Major Group 15), which includes, but is not limited to:

1. New construction services;
2. Alteration services;
3. Remodeling services;
4. Repair services; and
5. Renovating services;

(e) Heavy construction services other than building
construction services (Major Group 16). See 12ER-87-31.
Heavy construction services are construction services such
as those involving highways and streets, bridges, sewers,
railroads, irrigation projects, flood control projects,
marine construction, and similar work.

(f) Special trade construction services - (See
12ER-87-31. (Major Group 17), which includes, but is not
limited to:

1. Furnace services;
2. Plumbing services;
3. Refrigeration services; (See Rule
12A-1.016(4), F.A.C.)
4. Sheet metal services;
5. Air conditioning services; (See Rule
12A-1.016(4), F.A.C.)
6. Painting services;
7. Paper hanging services;
8. Decorating services;
9. Electrical services;
10. Burglar alarms services;
11. Masonry and stone setting services;
12. Plastering services;
13. Carpentering and flooring services;
14. Earth moving and excavation services: (See Rule 12A-1.016, F.A.C.)
15. Antenna installation services; and
16. Fence installation services.

(g) Printing, Publishing, and Allied Services - (Major Group Number 27) - See Rules 12A-1.008, 12A-1.024(1), 12A-1.027, 12A-1.028, 12A-1.034(3), 12A-1.072(7)(11), F.A.C.
(Major Group 27), which includes, but is not limited to:
1. Newspaper: publishing, publishing and printing;
2. Periodical: publishing, publishing and printing;
3. Book: publishing and printing;
4. Miscellaneous publishing: and
5. Service industries for the printing trade, which include, but are not limited to:
   a. Advertisement typesetting services;
   b. Composition services, hand or machine;
   c. Typesetting services;
   d. Typographic composition services;
   e. Photoengraving services;
   f. Bookbinding services; and
   g. Engraving services.

(h) Coating, engraving, and allied services - (Group Number 347), which include, but are not limited to:
   (a) Buffing services;
   (b) Cleaning services;
   (c) Decontaminating services;
   (d) Depolishing services;
   (e) Polishing services: and
   (f) Sand blasting services.

(i) Local and suburban passenger transportation
services (Major Group 41). See 12ER-87-34.

(j) Motor Freight Transportation and Warehousing

Services (Major Group 42). See 12ER-87-34.

(k) Water transportation service (Major Group 44). See 12ER-87-34.

(l) Transportation by Air services (Major Group 45).

See 12ER-87-34.

(m) Transportation services - Major group as a whole.

(Major Group 47). See 12-ER-87-34.


(o) Electric, gas, and sanitary services. (Major Group 49).

1. Electrical services are taxable, pursuant to Rule 12A-1.053;

2. Gas services are taxable, pursuant to Rule 12A-1.059:

3. Water services (the sale of water) is specifically exempt under s. 212.08(4)(a)1., F.S. but this does not include mineral or carbonated water.

4. See 12-ER-87-35 for taxable sales of sanitary services, steam and air, and irrigation services.

(p) Banking service. (Major Group Number 60) See 12-ER-87-13.

(q) Credit Agencies other than Banks (Major Group Number 61). See 12-ER-87-13.

(r) Security and commodity brokers, dealers, exchanges, and services (Major Group Number 62) See 12-ER-87-15.

(s) Insurance (Major Group Number 63) See 12-ER-87-14.

(t) Insurance agents, brokers, and service (Major Group Number 64) See 12-ER-87-14.

(u) Real estate (Major Group Number 65) See 12-ER-87-16.

(v) Combinations of real estate, insurance, loans, law
offices (Major Group Number 66) See 12-ER-87-16.

(w) Holding and other investment offices (Major Group Number 67) See 12-ER-87-13 and 12-ER-87-15.

(x) Personal services - (Major Group 72); except that beauty and barbershop services enumerated in SIC Groups 723 and 724 and receipts from and coin operated laundries and coin operated dry cleaner services enumerated in SIC Industry Number 7215 are specifically exempt from tax. Taxable services under Major Group 72 include, but are not limited to:

1. Baby sitting bureau services (not private household employment);

2. Beauty spas services;

3. Birth certificate agencies;

4. Car title and tag services to individuals;

5. Carpet, rug, and upholstery cleaning services;

6. Check room concessions or services;

7. Clothing rental services;

8. Coin-operated service machine operation; scales, shoe shine, lockers;

9. Comfort station operation;

10. Costume rental;

11. Debt counseling or adjustment service to individuals;

12. Dress suit rental;

13. Dressmaking service on material owned by individual customers;

14. Dry cleaning services;

15. Escort services;

16. Genealogical investigation services;

17. Health clubs or spas services;

18. Laundry services;

19. Locker rental, except cold storage;

20. Marriage bureau services;
21. Massage parlor services;
22. Pillow rental services;
23. Porter services;
24. Portrait copying services;
25. Reducing salon services;
26. Rental of items for personal use by
   individuals, except for recreation;
27. Rest room operation services;
28. Scalp treatment services;
29. Seamstress services;
30. Shopping services;
31. Slenderizing salon services;
32. Spas, health: except resort with lodging
   services;
33. Steam bath services;
34. Stitching, on a custom basis;
35. Tattoo parlor services;
36. Tax return preparation services;
37. Turkish bath services;
38. Valet parking services;
39. Valet services: See Rule 12A-1.042, F.A.C.
40. Wardrobe services, except theatrical; and
41. Wedding chapels, privately operated.

(y) Business Services (Major Group 73), which include
but are not limited to:
1. Advertising services; see 12-ER-87-44.
2. Adjustment bureaus, except insurance
   adjustment agencies;
3. Collection agency services (accounts),
   except for real estate, see 12-ER-87-41;
4. Consumer credit reporting bureaus;
5. Credit bureaus and agencies;
6. Credit clearinghouses;
7. Mercantile credit reporting bureaus;
8. Address list compliers;
9. Addressing services;
10. Addressographing services;
11. Direct mail advertising service;
12. Mail advertising service;
13. Mailing list compilers;
14. Mailing services;
15. Blueprinting services;
16. Photocopying services;
17. Film strips and slides;
18. Graphic arts and related design services;
19. Photographic studio services, commercial;
20. Silk screen design services;
21. Slide film producers services;
22. Still and slide film producers services;
23. Aerial photographic service, except
    mapmaking;
24. Chart and graph design services;
25. Commercial art and illustration services;
26. Commercial photography services;
27. Creative services to advertising industry,
    except writers;
28. Court reporting services;
29. Duplicating services: except printing,
    blueprinting, and photocopying;
30. Letter writing services;
31. Mimeographing services;
32. Multigraphing services;
33. Multilithing services;
34. Public stenographers;
35. Stenographic services;
36. Typing services;
37. Window cleaning services;
38. Disinfecting and exterminating services;
39. News syndicates services, including, but not
    limited to, news correspondents, independent, news features.
news pictures, gathering and distributing, news reporting
services for newspapers and periodicals, news ticker
service, and press service (news syndicate) See Rule
12-ER-87-11(40):

40. Janitorial and cleaning services.
41. Employment agency services, see 12-ER-87-21;
42. Temporary help supply services, see
12-ER-87-21;
43. Computer and data processing services, see
12-ER-87-29;
44. Research and development laboratory services,
which include, but are not limited to, business analysis,
financial management service to businesses, lobbyists,
market research, and personnel management;
45. Detective agencies and protective services,
see 12-ER-87-18;
46. Trading stamp services;
47. Miscellaneous business services, which
include, but are not limited to:
   a. auctioneering services;
   b. authors' agent and broker services;
   c. bondsmen services;
   d. business brokers services;
   e. charge account services;
   f. correct time services;
   g. credit card services (collection by
individual firm);
   h. decoration services for special events;
   i. directories, telephone: distribution on
a contract basis;
   j. handwriting analysis services;
   k. interior decorating services, except
painters and paperhangers;
   l. lecture bureaus;
   m. liquidators of merchandise on a contract

basis services;

   a. microfilm recording and developing

services;

   o. notary public services;

   p. repossession services;

   q. tax collection agencies services:

collecting for a city, county, or state;

   r. welcome wagon services; and

   t. yacht brokers services.

12A-1.1007, 12A-1.073 and 12-ER-87-26, (Major Group 75),
which include, but are not limited to:

   1. Car washes, including self service or
automatic:

   2. Detailing autos;

   3. Inspection services; and

   4. Towing services:

(aa) Miscellaneous repair services. See Rule
12A-1.1006 and 12A-1.016, F.A.C. (Major Group Number 76),
which include but are not limited to:

   1. Armature and electric motor repair;

   2. Cesspool cleaning, see 12-ER-87-35;

   3. Cleaning and reglazing baking pans;

   4. Cleaning bricks;

   5. Furnace and chimney cleaning;

   6. Sharpening and repairing knives and tools;

   7. Tank and boiler cleaning services; and

   8. Taxidermists;

(bb) Motion picture services. See Rule 12A-1.085, and
12-ER-87-45.

(cc) Amusement and recreation services, except motion
picture (Major Group 79). See 12-ER-87-30.

(dd) Legal Services (Major Group 81). (See
12-ER-87-11(25).

(ee) Educational services in Industry Number 8299,
except those services provided by bible schools and the sale
of educational services by any nonprofit religious
organization described in SIC Industry Number 866. (See
12-ER-87-11(7).

(ff) Museums, art galleries, botanical and zoological
gardens. See Rule 12A-1.005, F.A.C. Major Group 84
includes but is not limited to:
1. Art galleries, noncommercial;
2. Museums, noncommercial;
3. Planetaria, noncommercial;
4. Aquariums, noncommercial;
5. Arboretas, noncommercial;
6. Botanical gardens, noncommercial; and
7. Zoological gardens, noncommercial;

(EE) Membership Organizations (Major Group 86). See
12ER-87-33.

(hh) Miscellaneous services. (Major Group Number 89)
include, but are not limited to:
1. Architectural services;
2. Designing services: ship, boat, machine, and
product;
3. Engineering services: Industrial, civil,
electrical, mechanical, design, etc.;
4. Marine engineering services;
5. Petroleum engineering services;
6. Photogrammetric engineering services;
7. Surveying services: Land, water, and aerial;
8. Archeological expeditions services;
9. Educational research agencies, noncommercial;
10. Medical research services, noncommercial
services: (cancer, TB, etc.);
11. Research agencies, scientific and educational
services: noncommercial;
12. Research institutes: Brookings, Carnegie,
NBER, etc.;
13. Scientific research agencies, noncommercial;
14. Social research, noncommercial;
15. Accounting services;
16. Auditing services;
17. Billing and bookkeeping services;
18. Certified public accountants services;
19. Payroll accounting services;
20. Public accountants, certified;
21. Actuaries, consulting;
22. Advertising copy, writers of;
23. Announcers, radio and television service;
24. Art restoration;
25. Artists, excluding commercial and medical artists;
26. Artists studios, except commercial and medical;
27. Authors;
28. Chemists, consulting: not connected with business service laboratories;
29. Christian science lecturers;
30. Cloud seedings (artificial nucleation);
31. Consultants, nuclear, not connected with business service laboratories;
32. Entomologists, consulting: not with business service laboratories;
33. Geologists, consulting: not connected with business service laboratories;
34. Ghost writing;
35. Greeting cards, hand painting of;
36. Inventors;
37. Lecturers;
38. Music arrangers;
39. Newspaper columnists;
40. Physicists, consulting: not connected with business service laboratories;

165
41. Psychologists, Industrial;
42. Radio commentators;
43. Sculptors studios;
44. Songwriters;
45. Stained glass artists;
46. Weather forecasters;
47. Weather modification (rainmakers); and
48. Writers.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33 of
Chapter 87-6 Laws of Florida.

Law Implemented Section 3, 6, 7, 9, 10, 12, 23 and 30, of
Chapter 87-6, Laws of Florida.
Janitorial and Cleaning Services.

(1)(a) Persons engaged in the business of performing or providing janitorial service, building maintenance and cleaning, are performing or providing a taxable service, including the services performed or provided in a dwelling. "Janitorial services" means the type of cleaning services performed by a janitor in the regular course of duty, whether such services are performed individually, under separate contract, or are included within a general contract to perform a combination of such services. The term includes, but is not limited to, contracts to perform interior window washing, floor cleaning, vacuuming and waxing, the cleaning of interior walls and woodwork, and cleaning of restrooms and furnishings. Also included within the meaning of the term is the movement of furniture and other items of personal property within a building.

(b) Workers who are employed by private households to serve on or about the premises of private households in occupations usually considered as domestic service, such as babysitters, maids, butlers, cooks, gardeners, etc., engage in a service not specifically taxed under Ch. 86-7, F.S., Laws of Florida. These services, noted in SIC Major Group 88, are therefore not taxable.

(2) If janitorial services are required as a condition of commercial rental and not separately stated or accounted for on the invoices or other billings, they are part of the consideration for the rental and taxable under s. 212.031, F.S.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-20  Flying Services. Persons engaged in the business of teaching a course of instruction in the art of operating and flying an airplane are performing a taxable service. Taxable flying service shall also include all other types of flying service the taxation of which is not prohibited by Federal law. However, agricultural aerial dusting and spraying services are exempt as an agricultural service.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
Personnel Supply Services.

(1) Charges made by those enumerated in SIC Group Number 736, relating to Personnel Supply Services are taxable.

(2) Those enumerated in this group include, but are not limited to:

(a) Employment Agencies;
(b) Temporary Help Supply Services; and
(c) Personnel Supply Services.

(3) Employment Agency Services - Employment agencies engaged in the business of providing listings of available employment or aiding others in any way to procure employment are performing or providing a taxable service. The aforementioned services are subject to tax, regardless of whether they are rendered for the prospective employee or prospective employer.

(4) Those services related to the casting of motion pictures (refer to s. 212.0592(18)(a)1. of Chapter 87-6. Laws of Florida) are exempt.

(5) When services provided by an employment agency are sold to or purchased by an individual, the service is considered to be performed at the physical location of the agency and not where the actual place of employment is located.

(6) When services provided by an employment agency are sold to or purchased by a business the service is considered to be performed at the location of the place of business seeking the employment (whether within this state or outside the state).

(7) Any other services performed by those businesses enumerated in SIC Group Number 736 (i.e. counseling, training, etc.) will be taxed based on the physical location where such services are performed.
(8) The service of providing temporary help, such as labor pools, manpower pools and modeling services is taxable.

(9) Employee leasing services enumerated in SIC Industry Number 7369 must pay tax on all charges made for their service, less the leased employee's salary and/or benefits paid to or provided the leased employee. (See Rule 12-ER-87-11(39))

(10) When any personnel related services are sold exempt from tax, the seller of such services must secure an properly executed Exempt Service Purchase Permit or an Exempt Service Purchase Affidavit.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
DRAFT/Sales Tax Emergency Rules - 6/10/87

1. Landscape and Horticultural Services.

(1)(a) Persons engaged in the business of landscape and horticultural service are performing or providing a taxable service. Landscape and horticultural services include, but are not limited to, the following services:

1. Garden planning;
2. Horticultural advisory or counseling services;
3. Landscape architects;
4. Landscape counseling;
5. Landscape planning;
6. Bermuda sprigging services;
7. Cemetery upkeep, independent;
8. Garden maintenance;
9. Garden planting;
10. Lawn care;
11. Lawn fertilizing services;
12. Lawn mowing services;
13. Lawn sprigging services;
14. Mowing highway center strips and edges;
15. Arborist services;
16. Ornamental bush planting, pruning, bracing, spraying, and surgery;
17. Ornamental tree planting, pruning, bracing, spraying, and surgery;
18. Public utility line tree trimming services;

(b) A person engaged in the business of performing lawn and garden services is the ultimate consumer of equipment, materials and supplies he uses in providing his services, unless the materials (not equipment and supplies) are transferred to the customer in conjunction with the performance of the service in a form and quantity in which a fixed or definite sales price can be ascribed and in a form and quantity typically associated with the sales of such
property. (See 12-ER-87-5(3).)

(2) Lawn and garden care services provided by someone who does not hold himself out as engaged in the business of providing or performing lawn and garden services will be exempt as an occasional or isolated service transaction.

For example: A teenager mows the grass for his neighbor for compensation. Unless the teenager is employed by a business establishment to perform this service or has established his own business, the charge made by the teenager will qualify as an occasional or isolated service.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-23 Services Performed or Provided by a Governmental Entity.

(1) Most services performed or provided by governmental entities for a fee are exempt from tax on the sales or use of services. (See 12 ER 87-11(8).)

(2) Taxable services performed or provided by a governmental entity include, but are not limited to:

(a) Utility services sold to other than residential households or owners of residential models;

(b) Sewerage services, including hook-up fees or impact fees paid for such services, except when sold to residential households or owners of residential models and except as provided in Rule 12-ER-87-11(20);

(c) Garbage, except where the service is sold to residential households or owners of residential models.

(2)(a) Where the state or a local governmental agency leases or grants a license to use recreational facilities to any person for the purpose of that person sponsoring or participating in games or tournaments, and that person charges others to participate or to view such events, both the charge for the use of the facility and the charge the person makes to others, is taxable. The person making such charge is required to either:

1. Register as a dealer to collect and remit the tax; or

2. Collect the tax and turn same over to the state or local government, whereby the governmental agency will be required to remit the tax. If the taxes are turned over to the governmental agency for remitting, the person doing so must:

a. Submit documentation to the governmental agency showing total receipts collected on such event(s) and submit the amount of tax due.
b. Submit documentation and tax to the governmental agency at the close of the event(s) or on the next workday.

c. Keep documentation for 5 years to show total receipts, tax collected, and amount turned over to the governmental agency.

d. The governmental agency will not be held liable for taxes that are due but not collected and turned over to the governmental agency.

e. The governmental agency will be liable for remitting all taxes turned over to it, less the dealer’s collection allowance.

(b) Admissions to events sponsored by organizations qualifying under 501(c)(3) or described in § 170(c) of the Internal Revenue Code are subject to tax.

(3) The lease, sublease, or rental to a person providing food and drink concessionaire services within the premises of an airport, a movie theater, a business operated under a permit issued pursuant to chapter 550 (dog and horse tracks) or Chapter 551 (frontons), or any publicly owned arena, sports stadium, convention hall, or exhibition hall is exempt from tax.

Specific Authority 212.17(6), 212.18(2) FS.; Section 33, Chapter 87-6, Laws of Florida.

Law Implemented Sections 2, 3, 7 and 8, Chapter 87-6, Laws of Florida.

History New 7-1-87.
12-ER-87-24 Water Conditioning Services.

(1) The charge for providing water conditioning (soft water service) is taxable. The tax will apply to the total consideration paid for such service.

(2) The periodic service fee charged by an establishment which services water conditioners owned by others will be taxable.

(3) An establishment which provides a water conditioning service or services will owe tax on all materials and supplies, i.e., tanks, minerals and other equipment purchased to be used in providing such service, unless such materials are separately billed or actually sold to the customer.

(4) Charges for deionization services are taxable.

Specific Authority 212.17(6), 212.18(2) P.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-25 Tree Trimming And Removal Services.

(1) Persons engaged in the business of tree trimming
and removal are performing or providing a taxable service.
Persons engaged in "stump removal" are engaged in a taxable
service, as are persons engaged in the removal of any other
portion of a tree, such as the branches or trunk. The
trimming or removal of any shrub which has a woody main stem
or trunk with branches shall constitute tree trimming or
removal and the charge for the trimming or removal of such a
shrub shall be subject to tax.

(2) Tree trimming or tree removal performed as an
agricultural service as provided in Major Group 07 or as a
forestry service under Group Number 085 of the 1972 S.I.C.
manual are not taxable. Examples of this include pruning
agricultural orchards, removing orchard trees, thinning pine
forests, etc.

(3) The establishment performing the tree trimming and
tree removal service owes tax on all machinery and
equipment, materials, supplies, vehicles, bucket trucks,
tractors, bulldozers, etc., purchased for use in performing
this service.

(4) Timber cutting, harvesting, estimating, and
transportation services related to those activities
enumerated in S.I.C. Group Numbers 241 and 242 are exempt.

Specific Authority 212.17(6), 212.18(2) FS.; Section 33,
Chapter 87-6, Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
Florida.

History - New 7-1-87.
12-ER-87-26  Automotive Services.

(a) The charge for performing or providing automotive services is taxable. Taxable automotive service charges include, but are not limited to the following:

1. The charge made for washing a motor vehicle including a self service or automated facility.
2. The charge for detailing a motor vehicle.
3. The service charge for inspecting a motor vehicle regardless of whether repairs or parts are rendered in conjunction with the inspection.
4. The charge made for repairing a motor vehicle or performing diagnostic tests regardless of whether such repair or test requires the use of any parts including lubricants by the repairman.
5. The charge made for towing a motor vehicle regardless of whether the towing company performs any subsequent repairs to the motor vehicle except as provided in Rule 12-ER-87.11(47).
6. The charge for alignment regardless of whether parts are used in performing the alignment.

(b) For purposes of this rule "automotive services" means services performed or provided by establishments engaged in furnishing automotive repair, fueling, rental, leasing and parking services to the general public.

Specific Authority 212.17(6), 212.18(2) FS; Section 33, Chapter 87-6, Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-27 Coin Operated Laundries and Coin Operated Dry Cleaners.

(1) Effective July 1, 1987, receipts from coin operated washing machines, coin operated dryers and coin operated dry cleaning equipment are exempt from tax.

(2) All receipts from coin operated laundries and coin operated dry cleaners shall remain taxable until July 1, 1987.

(3) The tax on the receipts from coin operated laundries and coin operated dry cleaners must be remitted by dealers on their June tax return due July 20, 1987.

(4) Effective July 1, 1987, owners, or operators of coin operated laundry and dry cleaning equipment must pay sales or use tax on the purchase or lease of such equipment, as well as repair of such equipment.

(5) Resale certificates extended by owners or operators of coin operated laundry and dry cleaning equipment to purchase, lease, or repair such equipment tax exempt are not valid after July 1, 1987. The resale certificate must be rescinded by the owner or operator, and the appropriate tax remitted on purchases, leases or repairs made after July 1, 1987.

(6) Operators of vending machines which are not equipped with tax collecting devices and from which soap, bleach, fabric softener or similar items are dispensed for 10 cents or more shall remit tax at the rate of 6.25 percent of gross sales. Purchases of these items for resale are exempt provided a properly executed resale certificate is extended to the seller at the time of purchase.

(7) When coin operated laundry and dry cleaning equipment is placed on real property under a contract or similar provision which grants the equipment owner the right to use or occupy such real property, the portion of the
proceeds from the operation of the machines paid to the
owner, lessor or other person granting the machine owner or
operator the right to use or occupy the real property is
taxable.

Specific Authority 212.17(6), 212.18(2) FS; Section 33,
Chapte. 111 C. Laws of Florida.
Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
Florida.

History New 7-1-87.
12-ER-87-28  Communication Services.

(1) Charges made for providing communication services are taxable. For purpose of this subsection, "Communication Services" means those services referred to by Major Group 48 of the SIC manual, which include, but are not limited to:

(a) Telephone communications (wire or radio);
(b) Telegraph communication (wire or radio);
(c) Radio and television broadcasting;
(d) Stock ticker service;
(e) Telephone answering services;
(f) Telephoto service;
(g) Teletypewriter services;
(h) Cablevision services;
(i) Radar and Missile tracking services;
(j) Telecommunication services; and
(k) Transradio press service.

(2) The sales and use tax on services imposed by this subsection shall not be construed to impose an additional tax on transactions taxable pursuant to s. 212.05(1)(e), F.S. (See also Rule 12A-1.046, F.A.C.)

(3) A sale, to other than an end user, of telecommunication services consisting of a right of access for which an access charge, as defined in s. 203.012(1), is imposed, is a sale for resale.

(4) The charge for talent fees used by radio stations are taxable unless exempt pursuant to s. 212.08(12), F.S., (see Rule 12A-1.085 for partial exemption for master tapes or master records embodying sound).

(5) Line charge fees paid by radio stations are taxable.

(6) Charges, membership fees or license fees required to receive services from news syndicates including but not
limited to AP, UPI, Reuters or other like services are exempt. taxable.

(7) All remote database services accessed by telephone communications are taxable. Examples of this include but are not limited to, Westlaw, Lexis, Dow Jones Report, Plato, etc.

Specific Authority 212.17(6), 212.18(2) FS; Section 33, Chapter 87-6, Laws of Florida.

Law Implemented Sections 1, 3, 7 and 10, Chapter 87-6, Laws of Florida.

History New 7-1-87.
12-ER-87-29  Computer Services.

(1) The charges made for computer services are taxable. Computer services mean those services referred to in Group Number 737 of the SIC Manual, which include, but are not limited to:

1. Computer systems analysis and design;
2. Development of computer programs or systems;
3. Programming services;
4. Systems engineering;
5. Data processing services;
6. Computer time sharing;
7. Computer time leasing or rental;
8. Computer equipment repair and maintenance;
9. Computer consultants; and
10. Tape recertification service.

(2) Computer technician charges for customized computer software are taxable.

(3) The charge for analysis, design, and development of computer programs or systems is taxable.

(4) The charge made for a bookkeeping service, such as furnishing of financial statements, payrolls, tax reports, accounts receivable and accounts payable statements, etc., is taxable.

(5) The charge for key-punching is taxable.

(6) The charge for repairs or maintenance of equipment in which labor only is required of computer equipment is taxable.

(7) When computers are accessed by customers through terminal devices which are connected to the computer, each customer is in effect using a portion of the computer and the charge for such computer usage is subject to tax. A customer is able to compile programs, provide a variety of computational results printed out on his terminal and keep
data stored within the computer file for future use. This
produces basically the same results as if the customer had
processed the same data on his own computer; i.e., the
customer performs the tasks of entering data into the
computer and all processing is accomplished under his
control. The charge for such use of the computer may
include, among other things:

(a) Average amount of computer storage used.
(b) Computations performed by the computer.
(c) Time connected to the computer.

These charges are commonly referred to as "time
sharing". For the purpose of this rule, when the computer
is located in Florida the charges are construed to be for
rental of tangible personal property. When the computer is
located outside the state the charges shall be construed to
be for a service.

(8) Automatic teller machines (ATM) services to the
general public are considered to be financial services and
are exempt. Computer services purchased by providers of ATM
services are taxable except as provided in Rule
12-ER-87-11(33).

(9) All charges for remote database services are
taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
Florida.
History - New 7-1-87.
12-ER-87-30 Amusement and Recreation Services, except
Motion Pictures.

(1) Amusement and recreational services referred to in
SIC Major Group 79 are subject to tax except as provided in
Rule 12-ER-87-11(41).

(2) Coin-operated Amusement Devices.

(a) Charges for amusement devices, including but not
limited to juke boxes, pinball machines, mechanical
games, video games, mini theaters, and similar types of
amusement equipment are subject to tax.

(b) Owners or operators of coin-operated amusement
devices which are not equipped with tax collecting devices
are required to remit tax at the rate of 6.75 percent of
gross sales of each machine. To compute the correct amount
of tax due, the owner or operator of the coin-operated
amusement device should divide his total receipts from his
devices by 1.0675 to compute their gross sales and then
subtract their gross sales from total receipts to arrive at
the amount of tax due. This 6.75 percent tax rate
recognizes multiple transactions.

(c) The sale of a ticket, coupon, token, card, etc.
which entitles the purchaser to use an amusement device is
taxable. When tickets, coupons tokens, cards, etc. are sold
through a coin operated vending device the 6.75 percent tax
rate will apply to the gross sales from such machines (see
paragraph b) above).

(3) The purchase of amusement machines is taxable,
unless purchased exclusively for rental (see Rule

(4) All consideration due and payable by a machine
owner for the privilege of use, occupancy, or the right to
use or occupy any real property for any purpose is subject
to tax. The machine owner actually occupying, using or
entitled to use any such real property shall pay the tax to
his immediate landlord or other such person granted the
right to such machine owner to occupy or use such real
property.

(5) When amusement machines are placed on location by
the owner under a contract whereby he receives a portion of
the proceeds and location operator receives a portion, the
percentage the machine owner receives is rental income and
is taxable. This tax is to be collected by the machine
owner from the location owner. (See Rule 12A-1.044, F.A.C.)
The service of repairing machines is taxable, however the
purchase of parts to repair the machines is exempt provided
that the parts are separately stated on the repair invoice.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33 of
Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, of Chapter 87-6, Laws of
Florida.
12-ER-87-31  Construction Services.

(1) Construction Services: Effective July 1, 1987, contractors who repair, alter, improve, and construct real property are subject to the following provisions for sales and use tax purposes:

(a) There is no occasional or isolated sale of construction services.

(b) There is no sale for resale of construction services; and

(c) Contractors and subcontractors are considered the ultimate or final consumer of building materials they purchase or use in repairing, altering, improving, or constructing real property regardless of whether the construction services are taxable or exempt.

(2) Effective July 1, 1987, this rule shall nullify all past special tax provisions granted to contractors to the extent that they are in conflict with this rule whereby the contractors were given an option of keeping detailed cost accounting records and remitting the proper tax, or accruing and remitting tax on a certain percentage of the total contract price for heating and air conditioning, roofing and sheet metal, septic tank, glass and mirror contracts, etc., are repealed and revoked.

(3) Rules 12A-1.051 and 12A-1.094, F.A.C., do not apply to contractors who are subject to the provisions of this rule.

(4)(a) The following provisions of Chapter 212, shall not apply to the tax on construction services:

1. The definition of "sales price" pursuant to s. 212.02(21);

2. The provisions for the collection and remittance of tax as prescribed by s. 212.059(3);

3. The provision regarding the time the tax is due
pursuant to s. 212.059(4);

4. Those sections regarding the taxation of
transactions previously taxed, specifically s. 212.059(4);

5. The provision regarding the separation of taxable
and exempt services when invoiced pursuant to s.
212.059(7);

6. The provision regarding the separation of services
and real property pursuant to 212.059(6);

7. The provision regarding services sold to a
partnership pursuant to 212.059(4) and;

8. The provision regarding services sold between
members of affiliated groups pursuant to 212.0592(5).

(b) This rule governs the taxability of the purchase or use
of construction services and the purchase or use of tangible
personal property and the use of products manufactured or
fabricated by contractors for their own use in the
performance of public works and nonpublic works contracts.

(5) In cases of written contracts which were signed
prior to May 1, 1987, or offers submitted prior to such date
which are binding on the offeror and are accepted, or
contracts which are funded by government bonds sold before
May 1, 1987, or contracted prior to such date to be sold,
but not including any change orders executed on or after
such date for constructing improvements to real property,
the prime contractor responsible for performing the contract
shall not be required to remit any tax on the contractor's
services for that portion of the contract services purchased
performed prior to June 30, 1989, provided that:

(a) It is the responsibility of the prime contractor to
remit tax;

(b) The purchase of the service for which the tax is
not being remitted is necessary to complete the contract and
the tax cannot be legally collected from the principal and
cannot be included in the price charged the principal under
the terms of the contract. Types of contracts which may
come under this provision are "lump sum", "fixed fee," or
"guarantee price" contracts. In "cost plus" type contracts
and "contracts whereby the contractor or subcontractor has
agreed to sell specifically described and itemized
materials at an agreed price or at the regular retail price
and has agreed to complete the work on the basis of time
consumed," the contractor can normally include the price of
the tax he pays or accrues to the final purchaser.

(c) If the prime contractor cannot legally collect the
tax from the principal, the prime contractor must submit an
application with his first tax return in which the tax is
not remitted pursuant to this subsection to the Department
of Revenue for the specific contract(s) in question. The
application must contain:

1. a copy of each written contract, or if such
contract document is voluminous, a statement explaining the
scope of the contract, with other pertinent information,
such as, the name of the parties, contract number, date of
the contract and a copy of the signature page;

2. a schedule of the amount of tax that would have
been collected if the construction services were not
precluded from taxation because the contract was executed
prior to May 1, 1987;

3. the anticipated date of completion of the
contract;

4. an estimate of the value of services expected to be
performed under the contract subsequent to June 30, 1989;
and

5. a sworn statement signed by the applicant or his
representative, attesting to the validity of the
application.

(d) The above information must be submitted on each
subsequent tax return in which taxes are not remitted
pursuant to the specific contract(s).
(c) Effective June 30, 1989, and thereafter, the exemption provided in paragraph (c) above shall expire and contractor's services provided on or after such date shall be subject to tax.

(f) The above exemption does not apply to change orders or amendments to the original contract signed or executed on or after May 1, 1987, which materially effect the cost of the construction project or requires a new building permit to be drawn. For purposes of this paragraph, change orders or amendments materially affect the original contract if the aggregate amount of all such change orders or amendments equal or exceed 25 percent of the aggregate price first stated in the original contract.

(g) No exemption shall be approved on any contract entered into on or after May 1, 1987, except that if construction services have been performed and paid, or payable, prior to July 1, 1987, such construction service shall not be subject to tax, provided that it can be separately stated and identified from the construction services performed on or after July 1, 1987.

(6)(a) No tax shall apply to the construction services used in the construction or repair of roads pursuant to or in furtherance of a contract with a governmental entity described in s. 212.08(6). For the purpose of this paragraph the term "road" as defined in s. 334.03(17), F.S., shall apply. The term "road" shall not include parking lots, airport landing areas, or helicopter pads.

(b) No tax shall apply to the construction services used in the construction or repair or property used primarily for public worship.

2. For the purpose of this exemption the contractor must obtain from the public worship organization or institution a statement that the property will qualify for an exemption and a copy of their Consumer Certificate of Exemption issued pursuant to s. 218.08(7).
(c) No tax shall be imposed upon construction services or construction support services performed by one's own employees if the services are performed for an employer who is incidentally engaged in improving real property and such improvements are made in the furtherance of the employer's primary business, and the employer is not in the business of providing construction services.

(7) For purposes of this rule, the following terms shall mean:

(a) Contractor means a person who is engaged in the repair, alteration, improvement or construction to realty including but not limited to, persons engaged in building, carpeting, electrical, masonry, plastering, plumbing, heating, painting, ventilating, paperhanging, landscaping, sheet metal, glass, roofing, bridge, concrete, road, waterworks, pier or billboard work including subcontractors. For purposes of this subsection, the term, "contractor" includes both those who perform non-public works contracts and those who perform public works contracts.

(b) "Prime contractor" means:

1. A person who enters into a contract to construct, improve, alter, or repair realty with the person for whose benefit the realty is being constructed, improved, altered, or repaired;

2. A person who enters into a contract to undertake the primary responsibility for supervising the construction, improvement, alteration or repair of realty with the person for whose benefit the realty is being constructed, improved, altered, or repaired, in which case, all other persons involved in the construction who would otherwise qualify as prime contractors under subparagraph 1. shall be deemed subcontractors;

3. A person who undertakes, on a speculative basis or for his own use, the construction, improvement or alteration of realty; or
4. If the owner of the realty or the person for whose benefit the realty is being improved makes the improvements without contracting the work out, that person shall be deemed to be the "prime contractor".

5. A person who manufactures factory-built buildings.

(c) "Subcontractor" means a person who enters into a contract to provide construction services to a prime contractor or to another subcontractor.

(d) "Construction services" means any activity directly involving the construction, alteration, improvement or repair of realty.

(e) "Construction support services" means architectural, engineering, drafting, surveying, land planning, landscape design and interior design services when such services directly relate to the construction, alteration, improvement or repair of realty.

(f) "New construction" means factory-built buildings and any construction, alteration, improvement or repair of realty for which the contract price or cost price, including building materials used, exceeds $5,000.

(g) "Building materials" means tangible personal property physically incorporated into the affected realty.

(h) "Improvements to real property", for the purpose of this rule, means those improvements which are affixed to and/or incorporated into the realty in such a manner that the improvements become a part of the realty.

(i) "Contract price" means:

1. the total consideration paid pursuant to a contract for the construction, alteration, improvement or repair of realty, or in the case of new construction undertaken on a speculative basis, the total consideration paid pursuant to a contract to purchase the improved realty.

2. However, the contract price shall not include:

3. the fair market value of land and any improvements to the land existing prior to the contract for the
construction, alteration, improvement or repair of the
realty; or

b. the value of construction support services provided
by other than employees of the prime contractor.

(i). "Fair market value" means 120 percent of the
property's assessed value for ad valorem tax purposes, as
reflected by the most recent assessment roll for the county
prior to the new construction, unless the prime contractor
can demonstrate to the satisfaction of the department by
proof of comparable sales, actual purchase price, or
appraisal, that such assessment understates the value of the
property.

2. if an appraisal is used, the appraisal must be done
by an independent appraiser.

(k) "Cost price" means, notwithstanding other
provisions of Chapter 212, the direct and indirect costs of
construction, including but not limited to, the cost of
materials used, labor and service costs, interest charged,
and overhead expenses, without any deduction whatsoever.

(l) "Prime contractor" means a person entering into a
contract for the improvement of reality with the person for
whose benefit the reality is being improved, and means any
person who manufactures factory-built buildings. When new
construction is undertaken on speculation or for one's own
use, the person responsible for the undertaking shall be
considered the prime contractor. For the purpose of this
rule any time a contractor enters into a contract with the
owner of the reality or with the person for whose benefit the
reality is being improved, such contractor shall be deemed to
be a "prime contractor". If the owner of the reality or the
person for whose benefit the reality is being improved makes
the improvements without contracting the work out, that
person shall be deemed to be the "prime contractor".

(m) "Subcontractor" means a person entering into a
contract for the improvement of reality with a prime
contractor or with another subcontractor.

(d) "New construction" means factory-built buildings and any improvement to reality, but does not include any addition, repair or further improvement to existing improvements to reality unless a building permit is required for such addition, repair or further improvements.

(e) "Building materials" means tangible personal property physically incorporated into improvements to reality whether through new construction or addition or repair.

(f) "Improvements to real property" for the purpose of this rule, means those improvements which are affixed to and/or incorporated into the reality in such a manner that the improvements become a part of the reality.

(g) "Construction services" means activity involving the physical fabrication, physical modification, or physical repair of improvements to reality and engineering, architectural, surveying services enumerated in SIC Industry Number 8711, land planning services enumerated in SIC Industry Number 1732, and drafting and interior design services enumerated in SIC Industry Number 7399, when such services directly relate to improvements to reality. The term also includes those activities usually provided for a consideration and referred to by Major Groups 15, 16 and 17 of the SIC Manual.

(3) The applicability of the tax to contractors is as follows:

(a) A contractor, acting as a subcontractor only, is not required to register as a dealer, unless:

a. the subcontractor is an out-of-state subcontractor;

b. the subcontractor purchases items of tangible personal property from an out-of-state vendor who does not charge Florida Sales tax; or

c. the subcontractor manufactures items of tangible personal property for his own use in fulfilling his
contract.

d. If either is the case, the subcontractor is required to register with the Department of Revenue as a dealer for the purpose of accruing and remitting tax on items of tangible personal property purchased or manufactured.

2. A subcontractor is not required to accrue, charge or collect tax on his services. However, the subcontractor is considered the final consumer of tangible personal property he uses in fulfilling his contract.

(b) The method by which the prime contractor arrives at the total amount of tax due for the repairs, alterations, improvements and construction of real property or for combination of work on both real and personal property will depend on whether or not the improvements are for new construction or for construction that is other than new construction.

(c) The prime contractor's tax liability may originate from either of a combination of five sources, which are:

1. the purchase of building materials from vendors;

2. the manufacture, production, compounding, processing fabrication or importation of building materials by the prime contractor;

3. payments made to subcontractors;

4. work (services) the prime contractor performs for himself, or

5. the amount charged to the principal for any construction services, other than new construction. (For further explanation, see subsection (ii) below.)

(ii) The tax is due as follows:

1. on the purchase of building materials and construction support services from vendors or service providers the tax is due at the moment of the transaction. (see Rule 12A-1.054, F.A.C.).
2. On the manufacture or importation of building materials by the prime contractor, the tax is due at the moment the building materials are manufactured or imported for use.

3. For new construction undertaken pursuant to a contract, the tax shall be due when the prime contractor receives payments under the contract. If the contract price is paid in installments, the amount of tax to be paid with respect to each such draw or installment, before application of the dealer credit, shall be that proportion of the tax due on the total contract price which the amount of the draw or installment bears to the total contract price.

1. For new construction undertaken on a speculative basis or for the prime contractor's own use, when a subcontractor is involved, partial payment of the tax shall be due at such time payment is made by the prime contractor to the subcontractor based on 50 percent of the amount of such payment. Any tax amounts remaining shall be due 30 days after a certificate of occupancy is issued, or if no certificate of occupancy is required, when the new construction is first put to its intended use. (See paragraph (12) for issuance of a Certificate of Occupancy.)

5. For new construction undertaken for the prime contractor's own use, and no subcontractor is involved, the tax shall be due when a certificate of occupancy is issued, or if no certificate of occupancy is required when the new construction is first put to its intended use. (See paragraph (12) for issuance of a Certificate of Occupancy.)

8. On payments made to subcontractors, the tax is due at the time payment is made.

4. On work performed by the prime contractor for himself, the tax is due at the time his contract is fulfilled or within 30 days after the certificate of occupancy is issued, whichever is sooner. (See subsection
(12) For certification of occupancy.

65. On charges for construction service, other than new construction, tax is due at the time the prime contractor receives payment for the construction service rendered. The ultimate owner of the realty is invoiced.

(4c) The tax is required to be remitted to the Department of Revenue on the first day of the month following the date the tax is due as indicated in paragraph (c) above and shall be delinquent on the twenty-first day of each month; provided, however, if the 20th day falls on Saturday, Sunday or a federal or state legal holiday, returns shall be accepted as timely if postmarked or delivered to the Department of Revenue on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

(9) For new construction, the prime contractor is considered the final consumer of such construction services consumed in improving realty. The prime contractor is required to register as a dealer and remit the amount of tax due and payable on construction services as follows:

(a) For new construction undertaken pursuant to a contract, or undertaken on a speculative basis but sold within 6 months of completion of the new construction, the tax shall be imposed upon 50 percent of the contract price.

(b) For new construction undertaken for the prime contractor’s own use, or undertaken on a speculative basis and not sold within 6 months of completion, the tax shall be based upon 50 percent of the cost price.

(c) For new construction consisting of factory-built buildings, the tax shall be imposed upon the cost price, less the amount paid for building materials incorporated into such buildings.

(d) For new construction undertaken for the prime contractor’s own use or undertaken on a speculative basis, and directly related to real property registered or exempt
pursuant to chapter 198 (Land Sale Practices), or regulated
under chapter 721 (Real Estate Time Share Plans), the tax
shall be imposed upon 50 percent of the cost price.

(6) If new construction is undertaken pursuant to a
contract that is not an arm's-length transaction, or if new
construction is undertaken on a speculative basis and the
realty is then sold within 6 months pursuant to a contract
that is not an arm's-length transaction, the tax shall be
imposed upon 50 percent of the cost price of the new
construction, and not upon the contract price. A contract
that is an arm's-length transaction for purposes of this
paragraph is a transaction in which the greater of the
consideration actually paid or the aggregate price stated in
the contract is not less than the consideration that would
be paid for such goods or services by a willing buyer and a
willing seller, neither of which is under a compulsion to
buy or sell. If the aggregate price stated in the contract
is less than the cost price, then it shall be presumed that
the contract is not an arm's-length transaction. If the
actual consideration paid is greater than either the cost
price or the contract price, then the contract price shall
be the actual consideration paid.

(a) The tax shall be based on the total consideration
paid to the subcontractor, less the subcontractor's cost of
the building materials that were or will be incorporated
into reality. This deduction may be made only if:

1. The written proposal, contract, or interim or
final invoice of the subcontractor specifically describes,
itemizes and states the subcontractor's cost of the
building materials and the amount of tax paid on such
building materials;

2. The subcontractor provides a statement to the
prime contractor that the above described and itemized
building materials were or will be incorporated into reality
for the specific contract in question. and
the statement must be dated and signed by the subcontractor, or representative authorized to sign for
him.

4. the prime contractor should keep this statement in his files to support his credit on the cost of
his subcontractor's building materials.

(b) the prime contractor cannot take a deduction on
tangible personal property that is or will not be
incorporated into the building, i.e., form materials,
scaffolding, building jacks, temporary water connections,
etc.

t(c) The tax also shall be based upon the cost price to
the prime contractor of the services he provides.

(10) Elements of cost price will include those costs
that directly or indirectly benefit or are incurred because
of the construction, including but not limited to the
following items, notwithstanding tax being paid; unless noted otherwise:

Ad valorem taxes:

Building materials: (including except building materials
manufactured, imported or purchased by the prime contractor
and amounts paid to the subcontractor upon which a sales tax
has been paid)

- Building repair and maintenance;
- Depreciation on fixed assets;
- Direct labor;
- Electricity;
- Freight;
- Fringe benefits;
- Interest expense;
- Indirect labor;
- Indirect materials (not charged out as a direct building
material item);

Indirect cost including but not limited to promotional
and selling expense;
Insurance expense (fire, liability, etc.);
Office supplies, forms, etc.
Overhead expenses attributable to the construction cost:
Payroll taxes;
Rent
Sick pay;
Vacation pay;
Warehousing;
Waste disposal, or
Any other element of cost, if such elements are
reflected in the prime contractor's books and records as a component of the cost price of the construction services.

(114) The tax on the sale of construction services for other than new construction, shall be based on the total charge to the owner of the affected real property, less any amount consideration paid by the prime contractor for building materials that were or will be incorporated into the reality to subcontractors with respect to the project in question. However, the deduction for building materials shall only apply if the prime contractor has previously paid the sales tax on such materials, and the written contract or invoice provided by the prime contractor to the person for whom the construction was done specifically itemizes the building materials and the price paid by the prime contractor for such materials.

The prime contractor is required to accrue and remit tax based on the total consideration paid to the subcontractor, less a deduction for the the subcontractor's cost of the building materials that were or will be incorporated into the reality. This deduction may be made only if:

a. the written proposal, contract, or interim or final invoice of the subcontractor specifically describes, itemizes and states the price of the building materials.

b. the subcontractor provides a statement to the prime
contractor that the above described and itemized building
materials are for the specific contract in question, and
the statement must be dated and signed by the
subcontractor, or his representative authorized to sign for
him.

2. However, if the contract between the owner of the
affected real estate and the prime contractor specifically
describes and itemizes the building materials purchased by
the prime contractor and incorporated into the realty in
fulfillment of the prime contractor's responsibilities under
the contract, the tax shall be based on the taxable
consideration, further reduced by the price of the prime
contractor's said building materials on which tax has been
paid.

(124) No unit of local government shall issue a
certificate of occupancy for new construction until the
prime contractor submits Form DR 1CO, dated July, 1987,
which is hereby incorporated in this rule and made part of
the rule by reference, to the local government and certifies
thereon that the new construction is substantially complete.
Such form shall be provided to local governments by the
Department of Revenue, and the completed forms shall be
returned on the last business day of each month to the
Department of Revenue by the local governments.

(132) (a) Contractors who operate fabricating or
manufacturing plants which make items of tangible personal
property for their own consumption and use in the
performance of contracts for the construction or improvement
of real property are subject to tax upon the fabricated or
manufactured cost of such items.

(b) The tax is based upon the cost price of the product
manufactured, produced, compounded, processed or fabricated.
Elements of the cost price include those costs that directly
benefit or are incurred because of the manufacturing,
producing, compounding, processing or fabricating
construction, including but not limited to the following items, notwithstanding tax being paid:

unless otherwise:

Ad valorem taxes;
Building repair and maintenance;
Depreciation on fixed assets;
Direct labor;
Electricity;
Freight in;
Fringe benefits;
Indirect labor;
Indirect materials (not charged out as a direct material):
Insurance expense (fire, liability, etc.);
Office supplies, forms, etc.
Overhead expenses attributable to the manufacture;
Payroll taxes;
Raw materials; (except where tax has been paid on same) Rent;
Sick pay;
Vacation pay;
Warehousing raw materials or materials in progress;
Waste disposal; or
Any other element of cost
if such element is reflected
in the prime contractor's books and records as a component
of the manufactured cost.

(13)(a) When a contractor secures the rock, shell,
fill dirt and similar materials he uses in construction work
from a quarry, pit or other location he owns or leases, he
is the ultimate consumer of such materials and is liable for
use tax thereon. The basis upon which the contractor shall
remit the tax is the fair retail market value determined by
establishing either the price he would have to pay for it on
the open market or the price he would regularly charge if he
sold it to other contractors or users.

(b) When a contractor does not own or lease the land but has entered into an agreement to purchase fill dirt, rock, shell or similar materials for his own use, and wherein the contractor will excavate and remove the material, the taxable basis shall include the cost of the material plus all costs of clearing, excavating and removing, including labor and all other costs incurred by the contractor.

(154) In lieu of the method described in paragraph (11)(a) above, determining the taxable basis on rock, shell, fill dirt and similar materials a contractor uses in construction work, the Department of Revenue will accept as the taxable basis the land cost plus all costs of clearing, excavating and loading, including labor, power, blasting, etc.

(155) No tax is applicable when the Department of Transportation furnishes without charge the borrow materials or the pits where materials are to be extracted for use on a road contract.

(156) Borrow materials purchased on a cubic yard basis are taxable.

(157) Roofing contractors who operate tile plants and manufacture tile exclusively for their own consumption and use in the performance of roofing contracts are subject to tax upon the manufactured cost of such items (See subsection (132)).

(158)(a) Chapter 87.6, Laws of Florida, imposes a tax on the full fabricated cost of property being imported into the state, and requires all interstate dealers to pay tax on the completed fabricated cost on all similar property.

(b) Sheet metal workers in Florida are required to pay tax on the total fabricated or manufactured cost of the finished product used by them in the performance of contracts for the improvement of realty (See subsection
(20*) Roadside billboards and bulletins erected on the
site where they are to be permanently located and which rest
on foundations or have their own supports anchored into the
ground in a permanent manner are considered as improvements
to real property.

(21*) Large signs fabricated at the job site or partially
fabricated in the sign shop and affixed to a building in a
permanent manner are considered as improvements to real
property and are taxable. This includes signs wherein
framework is erected on top of a building to which is
affixed individual wood, metal, neon or similar type letters
and/or panels, with necessary illumination, in such a manner
as to compose a sign. Also included are signs consisting of
individual letters attached to the side of a building in a
permanent fashion and in such a manner as to constitute a
sign. This type often has background letters painted on the
building and neon tubing behind and on the face of the
letters. A dealer who constructs such signs for others on
a temporary basis or who uses them in his own advertising
business is the ultimate consumer of materials and supplies
used in the construction thereof and shall pay tax on their
manufactured cost (See subsection (13*)).

(22*) Signs or lettering on walls, floors, doors and
windows of buildings are improvements to real property, and
dealers who do this type work are the ultimate consumers of
materials and supplies so used and shall pay tax on the cost
thereof.

(23*) The charge made by a sign company for
advertisements appearing on any of the type signs referred
to in paragraphs (20*), (21*) and (22*) is taxable.

(24*) Signs fabricated prior to reaching the job site,
which do not become part of realty, are tangible personal
property and are fully taxable. The sale or rental of such
signs and the installation charges therefor, are fully
taxable as a sale or rental of tangible personal property.

(264) All other types of signs, whether hand painted, printed or electric, are tangible personal property and are taxable at their selling price. Installation charges are taxable.

(265) A contract set up as a lease agreement providing for the furnishing and installation of a security system or a fire sprinkler system whereby the property is designated as tangible personal property during the life of the lease, and at the moment of expiration of such lease the security system or the automatic sprinkler system becomes realty and the title thereto is automatically vested in the lessee, is considered a contract to improve real property. Such contractors should pay tax on all materials used in the construction of such systems. However, if a security system or a sprinkler system is installed under the terms of a lease agreement whereby it remains tangible personal property, the lessor should purchase the materials used in construction of the system without payment of tax and should collect tax on the rental charges.

(266) An awning which is sold and attached to realty by the seller loses its identity as tangible personal property.

(267) A prime contractor is the ultimate consumer of the materials he used in the construction of roads, sidewalks, driveways, parking lots, bridges, docks, seawalls and similar installations.

(268) Contractors who prefabricate seawall slabs, pilings and tiebacks for use in the construction of seawalls, docks and bridges are taxable upon the full fabricated cost of such materials.

(269) The sale of fill dirt is fully taxable, including delivery charges when delivery is made by the seller.

(a) When a contractor pursuant to a contract to deepen channels or harbors hydraulically pumps the dirt on
to spoil areas he is not deemed to be selling fill dirt; charge is for moving the material from one location to another and is taxable.

(b) When a contractor enters into a contract to fill using materials, removed from state owned submerged land, the taxable basis will be the cost of materials, fuel, blasting, labor or other costs incurred by the contractor.

(32) Contractors who install ice machines which are attached to and become a part of realty should pay tax to their vendors on the purchases of such machines.

(32+) A contractor may sell his equipment or materials tax exempt as an occasional or isolated sale only when he is not engaged in the business of selling tangible personal property of a similar type. The rental of such equipment or materials by the contractor is fully taxable.

(33+) A contractor or subcontractor is construed to be improving real property when he furnishes and installs wall to wall carpeting pursuant to a lump-sum, cost plus, fixed fee, or guaranteed price contract when:

(a) There is no retained title provision in the agreement:

(b) The carpeting is placed over unfinished or unserviceable flooring; and

(c) The carpeting is affixed to the floor by nails, glue or in some other manner and becomes the finished floor.

(Refer to Rule 12A-1.016(4) for the sale of carpeting which remains tangible personal property.)

(34+) A contractor or subcontractor is construed to be improving real property when he furnishes and installs mirrors pursuant to a lump-sum, cost plus, fixed fee, or guaranteed price contract when:

(a) There is no retained title provision in the agreement:

(b) The mirror is affixed to the building by nails.
screws, glue, cement or in some other manner.

(Refer to Rule 12A-1.016(4) for sales of mirrors that do
not become real property.)

(354) The charge made by a contractor for the
furnishing, installation and subsequent removal of forms and
related equipment used to hold and shape concrete on the job
and for the construction of items such as floor slabs,
joists, lintels, beams and columns is a charge for services
confusing and is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections . Chapter 87 .
Laws of Florida.
History New 7 1 87.
DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

12-ER-87-32  Accounting Services. - Effective July 1, 1987, the sale or use in this state of accounting services (described in paragraph (a)) for compensation are taxable.

(a) For purposes of this rule, accounting services include accounting, auditing, bookkeeping, billing and bookkeeping, payroll accounting, and preparation of tax returns.

(b) Taxable accounting services may be performed by:
1. Certified public accountants; or
2. Public accountants, bookkeepers, or others who are not required by the laws of this state to be licensed; or
3. Persons who perform such a service in violation of licensing or other provisions of law.

(c) Data processing and tabulation services that are not performed as a part of the services described in paragraph (a), are taxable as business services, enumerated by SIC Group Number 737.

(d) Compensation for an accounting service provided on or after July 1, 1987, is considered to have been received by the dealer when received, constructively or otherwise, for Federal income tax purposes; but no amendment after April 23, 1987 of Federal tax statutes or regulations can be taken into consideration in determining when compensation for an accounting service was received for purposes of the tax on the sale or use of services.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33 of Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
(1) Membership dues or membership fees paid to membership organizations are exempt from the tax on the sale or use of services, either as organizations enumerated in SIC Major Group 86, as non-profit arts, historical, or science organizations, or as regulatory athletic associations. (See Rule 12-ER-87-11(15).) This exemption is only applicable to dues or membership fees paid to organizations which are not for profit corporations under Chapter 617, F.S., or a comparable law of another state or are exempt organizations under the Internal Revenue Code. Seminar or convention registration dues or fees are also exempt, provided the membership organization meets the requirements stated above in this subparagraph and such dues or fees paid to the organization by its members are required for membership purposes.

(2) Membership dues and fees of other organizations, such as the following are taxable:

(2m) Membership sports and recreation clubs enumerated in "amusement and recreation services" under SIC Major Group 79 are exempt as amusement and recreation services (see Rule 12-ER-87-11(41)).

1. Athletic clubs and gymnasiums;
2. Aviation clubs;
3. Basketball clubs—little league;
4. Membership bathing beaches;
4h. Beach clubs;
5. Boating clubs;
6. Bridge clubs;
7. Sports and recreation clubs;
8. Country clubs;
9. Flying fields, maintained by aviation clubs;
10. Golf clubs;
11. Gun clubs;
12. Hunting clubs: (but not hunting camps which are
taxable as transient transit rentals--See Rule 12A-1.061,
F.A.C.)
13. Riding clubs;
14. Shooting clubs;
15. Swimming clubs;
16. Tennis clubs;
17. Yacht clubs.
18. Concert or opera companies (unless exempt as
not-for-profit "arts" organizations--See Rule
12-ER-87-11(19)(1)).
(37) News syndicates (taxable as "business services"
under SIC Code 73) are exempt.
(40) Dues and fees of other organizations not
enumerated in SIC Major Group 86 are either exempt or beyond
the scope of the tax on sale or use of services, as
follows:
(a) Hospitals, operated by membership organizations
(exempt as "health services" under SIC Major Group 80);
(b) Fraternity and sorority houses (outside the scope
of the tax as "lodging places" listed in SIC Major Group
70);
(c) Fraternal insurance activity (exempt as
"insurance"--See Rule 12-ER-87-11(11)).
Specific Authority 212.17(6), 212.18(2) F.S.: Section 33 of
Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 3 and 7, of Chapter 87-6, Laws
of Florida.
DRAFT/SALES TAX EMERGENCY RULES - 6/10/87
12-ER-87-34 Transportation Services.

(1)(a) Some transportation services are exempt from the tax on the sale or use of services as provided in subsections (4), (17), (18), and (19) of Rule 12-ER-87-11. However, those listed in subsections (2), (3), (4), and (5) of this rule fall outside those exemptions, and are taxable.

(b) Where the seller contracts to deliver tangible personal property under the terms that require the goods be shipped f.o.b. to a destination in Florida, the transportation charges (freight) are taxable if the sale is taxable. Where the transportation charges are billed by the seller to the buyer but documentation is inadequate to establish the point at which title passed to the buyer, such charges shall be considered a part of the taxable selling price. The tax applies to the above regardless of mode of transportation. (See 12A-1.045, F.A.C.)

(2) The following local and suburban transit and interurban highway passenger transportation services enumerated in SIC Major Group 41 are taxable including:

(a) Aerial tramways;
(b) Automobile rental, with drivers;
(c) Cog railways;
(d) Limousine rental, with drivers;
(e) Sightseeing buses;
(f) School buses;
(g) Bus charters; and
(h) Bus terminal operation.

(3) The following water transportation services enumerated in SIC Major Group 44 are taxable including:

(a) Transportation on rivers and canals (canal barge operation; canal transportation; intracoastal transportation, including transportation on the Atlantic and
Intra coastal Waterway: lake transportation; log rafting
and towing; river transportation; and transportation on bays
and sounds of the ocean):

(b) Ferries across rivers or within harbors (car
lighter ferries, intraport transportation, and railroad
ferries) are taxable.

(c) Miscellaneous water transportation (airboats, swamp
buggy rides, excursion boats, sightseeing boats, and water
taxi) are taxable.

(d) Canal operation and maintenance are taxable;

(e) Miscellaneous services (boat hiring or chartering,
boat livery, boat yard storage, boathouses, cargo salvaging
from distressed vessels, ship dismantling, marinas, renting
and operating marine basins, marine salvaging, marine
wrecking, salvaging from sunken craft, removing underwater
hazards, marine wrecking ships for scrap, oil spill cleanup,
survey and classification of ships and marine equipment, and
services associated with the operation of yacht basins) are
taxable.

(f) Transportation services described in paragraphs (a)
through (e) are exempt when related to transportation of
agricultural commodities, phosphate rock, potash,
nitrogenous fertilizers and phosphatic fertilizers, as
provided in 12-ER-87-11(4).

(4) The following transportation services relating to
all modes of transportation as enumerated in SIC Major Group
47, except when exempt, are taxable as indicated below:

(a) Freight forwarding, except where exempt as relating
to water transportation, as provided in paragraph (m) of
12-ER-87-11(13).

(b) Arrangement of transportation of freight and cargo,
except where exempt as relating to water transportation, as
provided in paragraph (n) of 12-ER-87-11(13).

(g) Inspection and weighing services incidental to
transportation;
(e) Packing and crating goods for shipping; and

(f) Miscellaneous services incidental to
transportation (sleeping and dining car operations not
performed by railroads, rental of horse drawn carriages or
cabs, cleaning railroad ballast, freight car loading and
unloading, pipe line terminal facilities, and stockyards,
not primarily for fattening or selling livestock.

(g) Transportation services described in paragraphs
(a) through (h) are exempt when related to transportation
of agricultural commodities, phosphate rock, potash,
nitrogenous fertilizers, and phosphatic fertilizers as
provided in 12-ER-87-11(4).

(5) If the provider of taxable transportation service
enumerated in subsections (2), (3) (4), and (6), is
involved only in intrastate movement, the charges will be
fully taxable. If the provider is involved in interstate or
international movement, the charges will be taxable based on
a proration established in subsection (6)(b).

(6) Air transportation services other than passenger
transportation services enumerated in SIC Major Group 45 are
taxable (except when exempt as provided in paragraph (e)).
transportation of agricultural commodities, phosphate rock,
potash, nitrogenous fertilizers, and phosphatic fertilizers,
as provided in 12-ER-87-11(4)), including:

(a) Air transportation by carriers holding certificates
of public convenience and necessity under the Civil
Aeronautics Act, operating over fixed routes on fixed
schedules, engaged primarily in the transportation of cargo
or freight.

(b) Air transportation by carriers permitted to operate
without a showing of public convenience and necessity under
the Civil Aeronautics Act, including noncertificated
irregular and supplemental air carriers, and including
only:

1. Noncertificated air cargo carriers;
2. Noncertificated "fixed-based" air operators;
3. Noncertificated air passenger carriers;
4. Noncertificated air taxis;
5. Flying charter service; and

(c) Airports and flying fields primarily engaged in the
operation and maintenance of airports and flying fields
and/or the servicing, repairing (except on a factory basis),
and storing of aircraft at such airports, including:
1. Aircraft cleaning and janitorial service;
2. Aircraft servicing and repairing, except on a
factory basis;
3. Aircraft upholstery repair; and
4. Hangar operation.

(d) Airport terminal services, providing coordinated
handling services for air freight or passengers at
airports.

(e) Air transportation services are exempt when:
1. Agricultural commodities, phosphate rock, potash,
nitrogenous fertilizers, and phosphate fertilizers are
transported, as provided in 12-ER-87-11(4); or
2. They are services related to processing and
accessorizing of imported motor vehicles, as provided in
12-ER-87-11(19)(c).

(7)(a) If the provider is involved only in intrastate
movement, the charges will be fully taxable. If the
provider is involved in interstate and/or international
movement, the charges will be taxable as set forth herein,
based on a proportion of the miles travelled in Florida as
it relates to total miles throughout the United States.
This proportion will be derived by using the formula
established in subparagraph (b).

(b) Services for consideration in connection with
interstate commerce and international commerce shall be
taxable only as provided herein or to the extent that the
imposition of the tax would not be unlawful under the United
States Constitution or an Act of the United States Congress
as provided in s. 212.0591, F.S.

1. If the point of origin of the interstate or
international transportation service is in this state then
the tax shall be computed upon one-half (1/2) of the charge
imposed by the carrier for the service. Similarly if the
point of termination of the service is in Florida then
one-half of the charge is subject to the tax. If both the
point of origin and the point of termination is in this
state then the total charge is subject to the tax.

   a. For purposes of this subsection the term "point of
origin" shall mean the physical location at which the
Florida service provider begins the movement of the
property.

   b. The term "point of termination" as used in this
subsection means the physical location at which the Florida
service provider's movement of the property ceases.

   c. As used in this subsection the term "Florida
service provider" means a person who is providing
transportation services in this state without regard to the
commercial domicile of the service provider.

1. In regard to interstate and international commerce.
   interstate and international commerce transportation
   services shall be considered sold or used in this state to
   the extent that the sales price or cost price of the service
   is apportioned to this state pursuant to subparagraph 2.
   below.

2. The sales price of the sale of interstate or
   international transportation services, or the cost price of
   the use of interstate or international transportation
   services, shall be apportioned to the state as provided in
   this subparagraph. There shall be included in the measure
   of the tax imposed by this part on the sale or use of
   interstate or international transportation services, that

                         214
proportion of the sales price or cost price of the Florida
service provider which is equal to the proportion of mileage
within Florida to the total United States mileage of the
Florida service provider for the service transaction in
question. For purposes of this subparagraph, "Florida-
service provider" means the person providing transportation
services in Florida regardless of the commercial domicile of
such person.

a: Example. By-The-Pound Air Freight agrees to transport
goods for XYZ Construction Company from Miami, Florida to
Peru for use in a construction job in Peru. By-The-Pound-
Air Freight charges XYZ Construction Company $500 for this
service. The total air miles from Miami, Florida to Peru is
1400, air miles from Miami, Florida to international air
space is 10 miles. Based on this information, what will
By-The-Pound Air Freight's proration factor be? How much
tax is due on this transaction?

Answer:

\[
\text{Proration} = \frac{10 \text{ Miles}}{10 \text{ Miles} + \text{Total U.S. Mileage}} = \frac{100}{1100} = 100\%
\]

\[
\text{Tax Due} = \text{Tax Rate} \times \text{Proration} \times \text{Cost} = \text{Tax Rate} \times 0.10 \times 500 = \text{Tax Due}
\]

b: Example. By-The-Pound Air Freight agrees to transport
goods for U.R. Tired Mattress Company from Miami, Florida to
Houston, Texas for sale in a retail outlet in Houston. On
the way to Houston By-The-Pound Air Freight stops in Mexico
city to deliver other goods for XYZ Construction Company
By-The-Pound charges U.R. Tired $1500 for this service. The
total air mileage is 4500.

Air miles from Miami, Florida to international air
space is 10 miles.
2. Air miles from Miami, Florida to Mexico City is 2,500 miles.

3. Air miles from Mexico City to Texas is 2000 miles.

4. Air miles from international air space to Houston, Texas is 57 miles.

Answer:

Proration — 10 Miles Florida   14.9254%<br>67 Miles Total U.S. Mileage

Tax Due — $1500.00 x 14.9254% ——— $223.99<br>Tax Rate ____________________________________________ X .05<br>(On Bracket) — 11.20

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 2 and 7, Chapter 87-6, Laws of Florida Section ______, Chapter 87- ______, Laws of Florida.
History — New 7-1-87.
12-ER-87-35  *Sanitary Services.*

(1) Sanitary services provided by private or governmental units contained in SIC Group Number 495, such as but not limited to sewerage systems, including hook-ups and such treatment processes as may be provided, garbage, operation of dumps, dead animal disposal, acid waste collection and disposal, malaria control and mosquito eradication and septic tank cleaning services enumerated in SIC Industry Number 7699, are taxable when sold or provided to organizations or facilities other than residential households or owners of residential models. *Sanitation Services, Inc.* contracts with a city to provide garbage collection services to residential subdivisions of the city. The charges from *Sanitation Services, Inc.* to the individual households for its service of garbage collection is exempt from taxation. However, if *Sanitation Services, Inc.* contracts to dispose of such garbage at a landfill the charge for the landfill's service is taxable as a separate service transaction.

(2)(a) Local trucking sanitary services, including only debris removal, carting only and garbage and refuse collecting and transporting, without disposal, as enumerated in SIC Industry Number 4212, is taxable when sold or provided to organizations or facilities other than residential households or owners of residential models.

(b) "Tipping Fees" or other charges allowing a person or business to dispose of garbage, debris, or refuse are taxable.

(3) The services outlined in subsections (1) and (2) of this rule are subject to tax whether provided by a private or governmental entity.

(4) Also, SIC Group Number 496 steam supply services are taxable. These include but not limited to cooled air
suppliers, distribution of cooled air, steam heating systems
suppliers of heat, and steam supply systems including
geothermal.

(5) Establishments primarily engaged in operating
water supply service systems included in SIC Group Number
494 and for the purpose of irrigation systems services
included in SIC Group Number 497 are not subject to the tax.
These include but are not limited to impounding reservoirs,
irrigation, irrigation system operation and water
distribution or supply systems for irrigation.

(6) Residential households or owners of residential
models as stated in subparagraphs (1) and (2) above,
includes apartments, condominiums, and similar multi-family
dwellings unless 50 percent or more of the dwelling rentals
are entirely transient in nature, see s. 212.03, F.S. and
Rule 12A-1.061, F.A.C.

(7) With regard to sanitary services, if the service is
billed on or after July 1, 1987, the entire amount billed is
subject to the tax.

EXAMPLE: A monthly billing cycle covering the period June
15, to July 15, 1987 billed prior to July 1, is completely
exempt. A monthly billing cycle covering the period June 15
to July 15, 1987, billed on or after July 1 is fully taxable
based upon proration, i.e., the charge for services rendered
after June 30, 1987 is taxable at the rate of 5%, without
proration.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
Florida Section ______, Chapter 87-____, Laws of Florida.
History - New 7-1-87.
12-ER-87-36 Wrecking Services.

(1) Persons engaged in the business of wrecking, tearing down, defacing or demolishing tangible personal or real property or any parts thereof are performing or providing a taxable service.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-37 Turkish Baths, Massage and Reducing Salons.

(1)(a) Persons engaged in the business of operating
      turkish baths, reducing salons or in the business of
      massaging are performing or providing a taxable service.

(b) "Turkish baths" shall mean any type of facility
    wherein the individual is warmed by steam or dry heat.

(c) "Reducing salons" shall mean any type of
    establishment which offers facilities or a program of
    activities for the purpose of weight reduction.

(d) "Massaging" shall include the kneading, rubbing or
    manipulating of the body to condition the body, but does not
    include any body manipulation undertaken and incidental to
    the practice of one or more of the healing arts.

(2) Persons engaged in the business of operating health
    studios which, as a part of their operation, offer any or
    all of the services of turkish baths, massages or reducing
    facilities or programs shall be subject to tax upon the
    provision of the above named service.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
Florida.

History - New 7-1-87.
12-ER-87-38  **Weighing Services.**

(1) Persons engaged in the business of weighing any item of tangible personal property are performing or providing a taxable service.

(2) However, weighing services connected with the transportation of agriculture are exempt from taxation. (See S.I.C. Major Group 47, specifically Group Number 478 and Industry Number 4782).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
DRAFT/SALES TAX EMERGENCY RULES - 6/10/87


(1) Persons engaged in the business of eradicating or preventing the infestation by termites, bugs, roaches and all other living pests are performing or providing a taxable service.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-40 Painting, Papering, Interior Designing, and Interior Decorating Services.

(1)(a) Persons engaged in the business of painting, papering, interior designing, or interior decorating are performing or providing a taxable service.

(b) "Painting" shall mean covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant, with some suitable liquid to form a solid adherent when spread on in thin coats for decoration, protection or preservation purposes and all necessary preparations thereto, including surface preparation.

(c) "Papering" shall mean applying wallpaper or wall fabric to the interior of houses or buildings and all necessary preparations thereto including surface preparation.

(d) "Interior decoration" shall mean the service of designing or decorating the interiors of houses or buildings, counseling with respect to such designing or decoration or the procurement of furniture, fixtures, or home or building decorations.

(e) Interior designers or decorators involved in the activity of painting or papering are considered to be making improvements to real property, see Rule 12-ER-87-31.

(2) When any person provides interior decorating service without charge as an incident to the sale of real or personal property, no sales tax, in addition to that paid on the purchase price or any part thereof of the personal property, shall be charged.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-41 Debt Collecting Services.

(1) Persons engaged in the business of performing or providing, for compensation, services for the collection of delinquent accounts receivable, are performing or providing a taxable service. The sale of a debt collection service shall be considered a sale for resale only if it meets the five (5) criteria contained in 12-ER-87-4.

Example: B collection agency collects from C’s debtors in the name of B. B retains a percentage for its services and turns over the balance to C. The percentage retained by B is subject to tax.

Example: B collection agency collects from C’s debtors in the name of B. B remits the total collected to C and receives a percentage of the amount collected as a collection fee from C on a monthly basis. The amount received by B on a monthly basis is subject to tax.

Example: B sells his accounts receivable to C collection agency for a percentage of the face amount of the accounts. C collects from debtors in the collection agency’s name and retains all amounts obtained. Neither of these transactions is subject to tax.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-42 Promotional Services.

(1) The sale of promotional services is taxable.

Example: John Doe Trading Stamp Company sells a promotional service to grocers in Florida. It provides stamps for distribution to the grocery buyer who can redeem these stamps for merchandise at redemption centers. Although the grocer will generally pass on the cost of the stamps to the customer through higher grocery prices, the promotional service is used by the grocer and is therefore taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-43 Cooperative Merchandising or Advertising

Agreements.

(1)(a) Payments pursuant to cooperative merchandising
or advertising agreements regardless of the basis upon which
these amounts are determined constitute taxable
consideration for the performance of advertising and
promotional services.

(b) Cooperative agreements are sales promotion devices.

These agreements generally provide for payments that are not
discounts but contributions toward cost of merchandising and
allowances to defray promotional expenses. The agreements
are generally offered on the part of manufacturers and other
sellers to make payment to retailers for their services in
advertising and otherwise promoting the sales of
commodities. The amounts of payments for such services are
generally either determined on the basis of volume sales
within given periods or on the basis of specified
advertising rates such as national line rate for newspaper
advertisements and standard station rates for radio and
television advertisements.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
Florida.

History - New 7-1-87.
Advertising Media.

The provisions of this rule implement the special advertising provisions of the sales and use tax on services set forth in s. 212.0595, F.S.

(1)(a) A tax at the rate of 5 percent of the sales price or cost price of advertising is imposed on advertising sold or used in this state. Every person exercising a taxable privilege who engages in the business of selling advertising in this state. For the exercise of such privilege, a tax is levied at the rate of 5 percent of the sales price of advertising sold in this state.

(b) The term "advertising" for purposes of this rule means the service of conveying the advertiser's message, and shall include any mark-up charged by an advertising agency or any other person for the service of brokering the medium (that is, the advertising service). However, the term "advertising" shall not include creative services of a type customarily performed by an advertising agency.

(c) Advertising is deemed to have been sold in Florida if the greater proportion of the advertising is performed within Florida based on costs of performance. "Costs of performance" means direct costs determined in a manner consistent with Generally Accepted Accounting Principles in accordance with accepted conditions or practices in the type advertising trade, or business, in which the advertising provider is engaged. If advertising is sold in Florida, the sales tax shall be collected and remitted by the advertising media provider, unless the advertising is purchased pursuant to a resale permit, in which case the person reselling the advertising shall collect and remit the tax, subject to the provisions of subsection (11).
(d) Sale price of the sale of advertising sold in this state means the total amount paid for the tangible personal property or services of advertising, including any services that are a part of the sale and any tangible personal property that is part of the service, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the services property sold, the cost of material used, labor or service cost, interest charged, losses, or any other expense whatsoever. Trade-ins or discounts allowed to the final consumer and taken at the time of sale shall not be included when computing the sales price.

(d) "Advertising" means advertising services and includes any activity the purpose of which is to convey an advertiser's message. "Advertising" does not include creative services of a type customarily performed by an advertising agency.

(2)(a) Except as otherwise provided, every person who has purchased advertising in other states, territories, the District of Columbia, or any foreign country, and used or consumed such advertising in this state, shall pay the tax at the rate of 5 percent of the cost price, the same as if such advertising had been sold at retail for use or consumption in this state. "Cost price" means the actual cost of advertising without any deductions whatsoever.

(b) The provisions of this subsection do not apply to the use or consumption of advertising, or distribution of advertising in this state, upon which a like tax equal to or greater than 5 percent has been lawfully imposed and paid in another state. However, if the amount of tax paid in another state is not equal to or greater than
5 percent, the person who purchases, uses, or consumes the advertising shall pay to the department the amount sufficient to make the total tax paid in another state and in Florida equal to 5 percent.

(c) Advertising is deemed to have been used in this state if it was sold outside this state for consumption in Florida.

(d) Advertising is presumed to be sold for consumption in Florida to the extent the sales price of the sale of advertising, or the cost price of the use of advertising, is apportioned to Florida.

(e) If advertising is not sold in Florida, but used or consumed in Florida by a advertiser having tax nexus in Florida, the person purchasing the advertising shall self-accrue the use tax, based upon the apportionment provisions contained herein, and remit the tax directly to the department unless the advertising is sold for resale to a person registered as a dealer with the Department, in which case the registered dealer shall collect and remit the tax when the advertising is resold.

(f) When advertising is sold or resold, the seller or reseller shall state the sales price of the advertising and the applicable apportionment factor, if any, separately from any other charges which may be included in the invoice, charge slip or other tangible evidence of sale.

(g) When the tax on advertising is not collected by the seller of the advertising, it is the responsibility of the purchaser to secure the apportionment factor pursuant to subsection (6), (7), (8) and (9) from the advertising media.

When advertising is purchased and resold, the person reselling the advertising may deduct the consideration paid
for advertising from his charges for purposes of calculating the sales price of the sale of advertising or the cost price of the use of advertising. The deduction shall not include taxes paid on the advertising nor any markup the retailer may have added to the advertising.

(3)(a) The sales and use tax on advertising shall be due and payable according to the brackets set forth in s. 212.12, F.S. at the time of the sale or use of the service unless the person required to remit the tax, elects to ascertain the amount of tax payable on advertising on a cash accounting basis at the time consideration is paid for such advertising and on the amount of the consideration paid. If such election is made, it shall be applicable to all taxable advertising transactions of such person.

(b) A person electing to ascertain the amount of tax payable on advertising on a cash accounting basis shall remit the tax on advertising at the time the consideration is paid for advertising and on the amount of consideration paid shall make his election request in writing setting out the trade name of his business, mailing address, the dealer's certificate of registration number assigned by the Department and the effective month of the election and the reason the election is requested. The request must be addressed to the Department of Revenue, Carlton Building, Tallahassee, Florida 32399-0100. All requests must be received by the Department before the tax return for which the election is made becomes delinquent. If such election is made, it shall be applicable to all taxable advertising transactions of such dealer for a minimum of 12 consecutive months. Every person electing to ascertain the amount of tax payable on the basis of tax receipts shall renew such election every five (5) years from the date of the initial
election. The department will review each election renewal
to ensure that the dealer is still primarily engaged in the
business of selling services.

(c) A person making an election to ascertain the amount
of tax payable on advertising on a cash accounting basis
remit the tax on advertising at the time the consideration
is paid may change his election and remit the tax on an
accrual basis by a written request setting out the trade
name of the business, mailing address, the dealer's
certificate of registration number assigned by the
Department, and the effective month of the election change
and the reason the election change is requested. The
request must be addressed to the Department of Revenue,
Carlton Building, Tallahassee, Florida 32399-0100. All
requests must be received by the Department before the tax
return for which the change in election is made becomes
delinquent. If such election to change is made, it shall be
applicable to all taxable advertising transactions of such
dealer for a minimum of 12 consecutive months.

(d) The department may permit persons required to file
returns and pay tax due on a monthly basis to divide a year
into a different number of reporting periods, provided each
reporting period is less than 30 days. A dealer requesting
a deviation from monthly filing and remitting the tax due
must make a request in writing, setting out in detail the
problems, the beginning and ending day, month, and year of
each respective reporting period, the trade name of his
business, mailing address, and the dealer's certificate of
registration number assigned by the Department of Revenue.
If the department determines that the information required
for the making of an accurate return cannot reasonably be
compiled by a taxpayer on a calendar month basis, it will
notify the dealer in writing that the deviation from monthly filing of returns and remitting of tax is authorized. Such returns shall be due and payable on the first day succeeding the end of the reporting period and shall be delinquent on the twenty-first day succeeding the end of the reporting period.

(4) The advertising media is not required to furnish the Department a listing of advertisers placing advertising with the advertising media.

(5) Consideration paid pursuant to written contracts for a term in excess of 2 years, entered into prior to April 1, 1987, are exempt until the expiration of such contract and renewal. The Department will review each renewal to ensure that the dealer is still primarily engaged in the business of selling services. However, the consideration paid pursuant to any extension or renewal of such contract is taxable.

(6) Calculation of the tax on advertising services rendered by broadcast media:

(a) The applicable tax rate shall be applied to an apportioned share of the entire sales or cost price of the advertising services rendered by any television broadcaster, or AM, FM or other commercial radio broadcaster, whether its signals are transmitted over the air, by cable or otherwise. The apportioned share shall be calculated by multiplying the entire sales or cost price by a proportion equal to the broadcaster's market coverage in Florida divided by its total market coverage in the United States.

(b) For a broadcaster whose signal is not primarily carried by cable, market coverage shall be measured by the number of U.S. households in its signal reception area.
2. The number of households shall be based upon household counts for county areas (or equivalent political jurisdictions, such as parishes in the State of Louisiana) published by the Bureau of the Census of the United States Department of Commerce as derived from its most recent decennial population census.

3. Signal reception area for television broadcasters whose signal is not primarily carried by cable shall be that geographic region included in the most recent predicted Grade "B+" predicted coverage contour filed by the broadcaster with the Federal Communications Commission.

4. Signal reception area for low power television broadcast stations whose signal is not primarily carried by cable shall be the signal strength contour areas filed with the Federal Communications Commission as follows:
   a. Channels 2-6 shall be the 62db above 1 microvolts per meter contour area;
   b. Channels 7-13 shall be the 68db above 1 microvolts per meter contour area; and
   c. Channels 14-69 shall be the 74db above 1 microvolts per meter contour area.

5. Signal reception area for FM radio broadcast stations whose signal is not carried by cable shall be the 70db above 1 microvolts per meter signal contour area filed by the FM broadcaster with the Federal Communications Commission.

6. Signal reception area for Class I (A and B) AM broadcast stations shall be the 100 microvolts per meter signal strength contour area filed by the AM broadcaster with the Federal Communications Commission. For all other Classes of AM broadcast stations the signal reception area shall be the 500 microvolts per meter signal strength.
contour area filed by the AM broadcaster with the Federal Communications Commission.

4. Signal reception area for radio broadcasters whose signal is not primarily carried by cable shall be that geographic region included in the most recent predicted maximum groundwave contour signal data filed by the broadcaster with the Federal Communications Commission.

75. If the signal reception area of a broadcaster whose signal is not primarily carried by cable includes more than half of the geographic area of a county or if it includes more than half the geographic area of a Standard Metropolitan Statistical Area (SMA) within the county, then the entire number of households in the county shall be considered within the signal reception area. Otherwise, none of the households in the county shall be considered within the signal reception area.
Broadcaster X's signal reception area includes over half the geographic area of the following counties:

<table>
<thead>
<tr>
<th>County</th>
<th>Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>G1</td>
<td>1,500</td>
</tr>
<tr>
<td>F1</td>
<td>2,000</td>
</tr>
<tr>
<td>F2</td>
<td>1,000</td>
</tr>
<tr>
<td>F3</td>
<td>2,000</td>
</tr>
<tr>
<td>F4</td>
<td>500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>75,000</strong></td>
</tr>
</tbody>
</table>

In addition, Broadcaster X's signal reception includes over half the Standard Metropolitan Statistical Areas in County F1 (already included above) and County F3.

Therefore, the total U.S. market coverage for broadcaster is the above **total (75,000) plus the population of county F3 (2,000)** for a grand total of **7,000**.

The apportionment factor for Broadcaster X is calculated as:

**Florida Households within Signal Reception Area**

Total U.S. Households within Signal Reception Area =

Households in Counties F1, F2, F3 and F4

Households in Counties G1, F1, F2, F3 and F4

\[
\frac{5,500}{7,000} = 0.7857 \text{ or } 78.57\%
\]

Therefore, for an advertisement sold by Broadcaster X for $100.00, the amount subject to Florida's sales and use tax is $78.57.
(c)1. For a broadcaster whose signal is primarily carried by cable, market coverage shall be measured by the number of subscribers receiving the broadcaster's signal by cable. Each household receiving the cable signal shall be considered a single subscriber. The geographic location of the subscriber shall be determined by his service address.

2. For cable television systems each separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and single, discrete unincorporated areas) served by cable television facilities constitutes a separate cable television system, even if there is a single headend and identical ownership of facilities extending into several communities. The term "cable television systems", for the purpose of this rule, shall have the same meaning as the term "cable television system" as defined by the Federal Communications Commission (s. 76.5(a) Code of Federal Regulation, revised as of October 1, 1985) and means "a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that services only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way; (3) a facility of a common carrier which is subject in whole or part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system.
to the extent such facility is used in the transmission of
video programming directly to subscribers; or (4) any
facilities of any electric utility used solely for operating
its electric utility systems."

3. The subscriber count for cable systems shall mean
the latest subscriber figures furnished by the operator of
the cable system to the FCC or copyright computed on the FCC
formula wherein (1) the total indicated dwelling subscribers
are added to (2) total revenues from bulk-rate subscribers
(such as motels) divided by rate of indicated dwelling
units.

EXAMPLE: Broadcaster Y is a broadcaster whose signal is
primarily carried by cable. It is carried by two cable
systems operating in Florida and Georgia. Broadcaster Y's
signal is available to any subscriber on either cable system
so that all subscribers are receiving subscribers.

<table>
<thead>
<tr>
<th>Subscribers</th>
<th>Subscribers</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Florida</td>
<td>In Georgia</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Cable System 1</td>
<td>10,000</td>
</tr>
<tr>
<td>Cable System 2</td>
<td>5,000</td>
</tr>
<tr>
<td>Totals</td>
<td>15,000</td>
</tr>
</tbody>
</table>

Broadcaster Y's apportionment factor is calculated as:

\[
\text{Florida Subscribers} = \frac{15,000}{15,000 + 5,000} = .7500
\]

Therefore, for an advertisement sold by broadcaster Y
for $100.00, the amount subject to Florida's sale and use
tax is $75.00.
(d)1. A television broadcaster shall be considered one
whose signal is primarily carried by cable if its total
number of receiving subscribers in the United States is at
least twice the number of U.S. households in its signal
reception area, measured as prescribed in paragraphs (b) and
(c).

2. A cablecaster television broadcaster with no
over-the-air television broadcast signal shall be considered
one whose signal is primarily carried by cable.

3. No radio broadcaster shall be considered one whose
signal is primarily carried by cable unless the broadcaster
demonstrates otherwise to the satisfaction of the
department.

(e) All apportionment factors and broadcaster signal
status determinations shall be made annually immediately
prior to the start of the broadcasters fiscal year and shall
utilize the most recent available data. However, if the
broadcaster's signal reception area, or the number of cable
systems upon which the broadcaster's signal is carried,
changes within the fiscal year, his apportionment factor and
signal status shall be redetermined.

(f) In the case of networks of broadcasters, the
applicable apportionment factor and signal status shall be
determined by aggregating the relevant data for each
affiliate which carries the advertising message.

(7) Calculation of the tax on advertising services
rendered by print media with a paid circulation:

(a) The tax rate shall be applied to an apportioned
share of the entire sales or cost price of the advertising
service rendered by any newspaper, magazine, periodical or
similar printed advertising media with a paid circulation.
The apportioned share shall be calculated by multiplying the entire sales or cost price by a proportion equal to the print media's market coverage in Florida divided by its total market coverage in the United States. The proportion shall be rounded to 4 decimal places.

(b) The term "market coverage", in the case of print media means average circulation within the geographic area of distribution of the publication in which the advertisement appears.

(c) Market coverage shall be measured by the number of copies of the edition which carries the advertisement in paid circulation of the publication as determined by an independent audit agency using accepted measurement standards for the industry. A given publication shall be considered to consist of multiple editions to the extent that advertisements are intended by the publisher to reach different geographical areas.

(d) The apportionment factor for each edition shall be determined annually immediately prior to the start of the publisher's fiscal year and shall utilize the most recent available data. If the publication did not exist in the prior year, apportionment shall be based on population within the counties in which the publication will be distributed, or such other measurement as may reasonably reflect circulation, subject to approval by the department.


Circulation is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Florida Circulation</th>
<th>U.S. Circulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Edition</td>
<td>15,000</td>
<td>100,000</td>
</tr>
<tr>
<td>Southeastern Edition</td>
<td>10,000</td>
<td>25,000</td>
</tr>
<tr>
<td>Miami Edition</td>
<td>5,000</td>
<td>5,000</td>
</tr>
</tbody>
</table>

240
The sales or cost price of a $100.00 advertisement would be apportioned as follows:

<table>
<thead>
<tr>
<th>Appearing in:</th>
<th>Apportionment Factor</th>
<th>Taxable Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Edition</td>
<td>15,000 = 15.00%</td>
<td>$ 15.00</td>
</tr>
<tr>
<td>100,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southeastern Edition</td>
<td>10,000 = 40.00%</td>
<td>$ 40.00</td>
</tr>
<tr>
<td>25,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miami Edition</td>
<td>5,000 = 100.00%</td>
<td>$100.00</td>
</tr>
<tr>
<td>5,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(And) where an advertisement appears in multiple editions of a publication and a single price is charged for the advertisement, the apportionment factor shall be based on the aggregated circulation of all editions in which it appears.

EXAMPLE: Assuming the same editions and circulation data as in the preceding example, the sales or cost price of a $100.00 advertisement appearing in all three editions would be apportioned as follows:

Total Florida circulation of all editions in which the advertisement appears

Total U.S. circulation of all editions in which the advertisement appears

\[
\frac{15,000 + 10,000 + 5,000}{100,000 + 25,000 + 5,000} = \frac{30,000}{130,000} = .2308 = 23.08\%
\]
The taxable amount is $100.00 x .2308 = $23.08

(8) Calculation of the tax on promotional advertising services including promotional sponsorships:

(a) The tax rate shall be applied to an apportioned share of the entire sales or cost price of promotional advertising services including promotional sponsorships. The apportioned share shall be calculated by multiplying the entire sales or cost price by a proportion equal to the print media's market coverage in Florida divided by its total market coverage in the United States. The proportion shall be rounded to 4 decimal places.

(b) The term "market coverage", in the case of print media means average circulation within the geographic area of distribution of the publication in which the advertisement appears.

(c) Market coverage shall be measured by the number of copies of the edition which carries the advertisement in paid circulation of the publication as determined by an independent audit agency using accepted measurement standards for the industry. A given publication shall be considered to consist of multiple editions to the extent that advertisements are intended by the publisher to reach different geographical areas.

(d) The apportionment factor for each edition shall be determined annually immediately prior to the start of the publisher's fiscal year and shall utilize the most recent available data. If the publication did not exist in the prior year, apportionment shall be based on population within the counties in which the publication will be distributed, or such other measurement as may reasonably reflect circulation, subject to approval by the department.

Circulation is as follows:

<table>
<thead>
<tr>
<th>Florida Circulation</th>
<th>U.S. Circulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Edition</td>
<td>15,000</td>
</tr>
<tr>
<td>Southeastern Edition</td>
<td>10,000</td>
</tr>
<tr>
<td>Miami Edition</td>
<td>5,000</td>
</tr>
</tbody>
</table>

or recording; and, erecting and/or displaying posters, stands, or other visual or aural aids intended to induce the sale of a product or service or to enhance the public perception of a business or its product(s) or services.

2. "Promotional sponsorship" means an intentional effort for consideration to display before the general public or a segment thereof a product or service, or the name, logo, or other visual or aural representation of a product, a service or a business, when the display is in connection with a public event or public figure.

"Promotional sponsorship" includes but is not limited to providing products or services to public figures for the purpose of endorsement of the product, the service or the provider thereof by the public figure whether expressly or by association or implication; and, underwriting all or a portion of the cost of an event or activity when the result includes or was intended to include a heightened awareness by potential customers of the existence of or benefit of a product, a service, or a business.

3. The display or endorsement of a product, a service or a business name shall be considered the act of providing a promotional message for the purposes of this subsection.
(d) Notwithstanding the above provisions if the purchaser of promotional advertising services does not have tax nexus in Florida such purchaser shall not be required to remit any applicable use tax on advertising.

(9) Calculation of the tax on other advertising services including direct mail advertising:

(a) The tax rate shall be applied to an apportioned share of the entire sales or cost price of the advertising service rendered via the distribution or placement of handbills, billboards, circulars, flyers, telephone directories, city directories, catalogs, programs, maps, real estate brokers' listings, price/order books, corporate reports to stockholders, and other like advertising or promotional printed material without a paid circulation. The apportioned share shall be calculated by multiplying the entire sales price or cost price by a proportion equal to the advertising media's market coverage in Florida divided by its total market coverage in the United States. The proportion shall be rounded to four decimal places.

(b) Market coverage shall be measured by the number of units of the promotional medium and the geographic location to which said limits are delivered by or at the direction of the advertising service provider. However, for billboards, the geographic location shall be based on the physical location of the billboard, and for printed materials inserted into newspapers or similar publications with paid circulation, apportionment shall be as provided in subsection (8).
EXAMPLE 1: A company is hired to distribute flyers which have been provided to it by the purchaser of the advertising service. Total consideration for the service is $1,000.

The contract calls for one flyer to be delivered to each address on a mailing list. 5,000 of the addresses are in Florida and 15,000 are in other states. The apportionment factor for this transaction is \[ \frac{5,000}{5,000 + 15,000} = 0.2500 \text{ or } 25.00\% \]

The taxable consideration is $1,000 x 25.00% or $250.00.

EXAMPLE 2: A company is hired to place advertising messages on 30 of its billboards for a single price of $1,000. Twenty of the billboards are in Florida and 10 are in other states. The apportionment factor for this transaction is

\[ \frac{20}{20 + 10} = 0.6667 \text{ or } 66.67\% \]

The taxable consideration is $1,000 x 66.67% or $666.67.

EXAMPLE 3: A company contracts with a newspaper to insert an advertising supplement into a Sunday edition of the paper for $1,000. The advertiser provides the supplement to the newspaper. The apportionment factor applicable to advertising placed in the newspaper is 85.00%, based on its paid circulation for the prior year as determined under subsection (8).

Taxable consideration is $1,000 x 85.00% or $850.00.
(10) Remittance of the tax on advertising services.

(a) If the sale of advertising services is in Florida, it is the responsibility of the seller to collect and remit the tax, irrespective of whether the purchaser holds an exempt purchase permit, unless the advertising is purchased pursuant to a resale permit in which case the person reselling the advertising shall collect and remit the tax.

(b) If the sale of the advertising service is not in Florida, any applicable use tax shall be remitted by the purchaser of the advertising service.

(c) Notwithstanding paragraphs (a) and (b), it is the responsibility of the purchaser to remit any applicable sales or use tax on the purchase of promotional advertising services, including promotional sponsorships.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 2, 3, 4 and 6, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-45  Motion Picture, Radio and Television

Broadcasting, Orchestra, Band, Theatrical and Entertainment Services.

(1) A producer, including a sub producer or coproducer, of motion pictures is the consumer of tangible property used in making a production and tax applies to all sales of such property to him, inclusive of charges for fabricating or processing. No tax liability arises from fabrication labor performed by a person for his own account, using his own equipment and his own employees, as a producer, subproducer or coproducer of a qualified motion picture as defined in s. 212.0592(18)(b), F.S., as created by s. 3 of Chapter 87-6, Laws of Florida; when such production is prepared for showing on screens or through television, for either theatrical, commercial, advertising, or educational purposes.

(2) Charges for involving the rental, lease, or granting a license for the use of real property when such property is used as an integral part of the performance of qualified production services as defined in s. 212.0592(18)(a), F.S., as created by s. 3 of Chapter 87-6, Laws of Florida, are not taxable only where the transactions are clearly identifiable in the records of the lessor or person receiving the rent or license fee. Records

(3) Rental receipts from motion picture films, when an admission is charged for viewing such film is exempt. However, this exemption shall not be construed to exempt the sale or use of advertising.

(4) Rental receipts from advertising films are subject to tax, regardless of whether an admission is charged for viewing such film.

(5) Tax applies to leases of video cassettes, videocassettes, and videodiscs for private use under which the
lessee or renter does not obtain or acquire the right to
license, broadcast, exhibit, or reproduce the video
cassettes, videotape, or videodisc.

(6) Distribution activities and services performed
directly in connection with distribution of a qualified
motion picture as defined in s. 212.0592(18)(b), F.S., as
created by s. 3 of Chapter 87-6, Laws of Florida, are not
subject to tax.

(7) Film, and license fees and direct charges for
films, video tapes, and transcriptions used by television
stations, radio stations or networks are exempt. However,
this exemption shall not be construed to exempt the sale or
use of advertising.

(8) "Residuals" are deemed to be consideration paid to
an actor in the nature of an intangible and are not
consideration paid for a service therefore they are not
taxable as a service.

(9) License fees and direct charges for films,
videotapes, and transcriptions used by television stations
or radio stations or networks for advertising are not
subject to tax.

(9) Line charges and talent fees used by television or
radio stations and networks in producing radio or television
broadcasts are subject to tax.

(10) The purchase or lease for use in this state of
motion picture equipment, video equipment and sound
recording equipment (equipment meeting the definition of
"section 38 property" as defined in s. 48(a)(1)(A) and
(B)(i) of the Internal Revenue Code), i.e., depreciable
equipment with a useful life of at least 5 years) may
qualify for the exemption authorized pursuant to s.
212.08(5)(f), F.S., if such equipment is used exclusively by
the producer, subproducer, or coproducer as an integral part
of production activities directed toward the preparation of
master tapes and master records embodying s.... or toward

248
the preparation of motion pictures or television productions
commercially produced for sale or for showing on screens or
broadcasting on television. However, the purchase, lease or
use of such equipment by television, radio broadcasting or
cable companies licensed by the Federal Communications
Commission is subject to tax. This exemption expires and is
void July 1, 1988, see Rule 12A-1.085, F.A.C.

(11) The gross receipts from the sale, lease, storage,
use or other consumption in this state of master tapes or
master records embodying sound or master films or master
video tapes may qualify for the partial exemption authorized
pursuant to s. 212.08(12), F.S. This partial exemption
expires and is void July 1, 1988, see Rule 12A-1.085,
F.A.C.

(12)(a) Motion picture services and activities
enumerated in SIC Major Group 78 are deemed to be taxable
transactions, except those services and activities
specifically exempted therefrom by Part I of Chapter 212,
F.S., subject to the conditions appertaining to such
exemption. For an explanation as to exempt motion picture
services and activities see Rules 12-ER-87-11(16) and
12A-1.085, F.A.C.

(b) Motion picture services and activities enumerated
in SIC Major Group 78 include:

1. Production of theatrical and nontheatrical motion
pictures for exhibition, other than for television,
including:

   a. Audiovisual program production;
   b. Cartoon motion picture production;
   c. Educational motion picture production;
   d. Industrial motion picture production;
   e. Motion picture production and distribution;
   f. Non theatrical motion picture production;
   g. Religious motion picture production; and
   h. Training motion picture production.
2. Production of theatrical and nontheatrical motion pictures and tape, including commercials, for television exhibition, including:
   a. Cartoon production;
   b. Commercials: tape or film
   c. Educational motion picture production;
   d. Television motion picture production;
   e. Distribution of television motion pictures;
   f. Nonthatrical motion picture film and tape production for television; and
   g. Video tape production (but not reproducing).

3. Services independent of motion picture production but allied thereto, such as motion picture film processing, editing, and titling; casting bureaus; wardrobe and studio property rental; television tape services (editing, transfers, etc.); and stock footage film libraries, including:
   a. Casting bureaus;
   b. Developing and printing of commercial motion picture film;
   c. Directors, motion picture: independent;
   d. Editing of motion picture films;
   e. Stock footage film libraries;
   f. Film processing, motion picture;
   g. Laboratories, motion picture (service);
   h. Motion picture consultants;
   i. Rental of motion picture equipment;
   j. Studio property rental for motion picture film production;
   k. Titling of motion picture film;
   l. TV tape services: editing, transfers, etc.; and
   m. Wardrobe rental for motion picture film production.
4. Renting theatrical and nontheatrical film to both television and non-television exhibitors including:
   a. Film exchanges;
   b. Motion picture distribution;
   c. Film rental; and
   d. Tape distribution for TV.

5. Auxiliary services to motion picture distribution, including:
   a. Booking agencies;
   b. Film delivery;
   c. Film libraries;
   d. Film purchasing agencies; and
   e. Theatrical booking agencies.

6. Motion picture theaters engaged in the exhibition of motion pictures, including:
   a. "Four-wall" (indoor) theaters;
   b. "Drive-in" (outdoor) theaters;
   c. Motion theater exhibitors, itinerants; and
   d. Motion picture exhibitors for airlines.

(13)(a) Theatrical producer, band, orchestra and entertainment services enumerated in SIC Major Group 792 for which no admission is charged are deemed to be taxable transactions, except those services specifically exempted therefrom by Part I of Chapter 212, F.S., subject to the conditions appertaining to such exemption.

(b) Theatrical producer, band, orchestra, and entertainment services enumerated in SIC Major Group Number 792 include:

1. Actors;
2. Ballet production;
3. Booking agencies, theatrical (except motion picture);
4. Burlesque companies;
5. Classical music groups or artists;
6. Concert artists;
7. Concert management service;
8. Concert organizations;
9. Costume design, theatrical;
10. Dance bands;
11. Employment agencies (theatrical, radio and television);
12. Entertainers;
13. Entertainment groups;
14. Entertainment service (entertainers for restaurants, clubs, radio and television);
15. Jazz music groups or artists;
16. Legitimate theater producers;
17. Magicians;
18. Opera companies;
19. Orchestras;
20. Plays (road companies and stock companies);
21. Popular music groups or artists;
22. Radio and television program producers;
23. Rental of theatrical scenery;
24. Repertory or stock companies, theatrical;
25. Scenery design, theatrical;
26. Stock companies, theatrical;
27. Symphony orchestras;
28. Television program, including commercials, producers;
29. Theatrical companies amateur;
30. Theatrical equipment rental;
31. Theatrical lighting, on a contract basis;
32. Theatrical production, except motion picture;
33. Theatrical ticket agencies;
34. Ticket agencies, theatrical; and
35. Vaudeville companies.
(14) Management, consulting, and public relations services, enumerated in SIC Industry Number 7392, such as business analysts, business consultants, business economists, business research service, economic research, market analysis or research, opinion research, promotion service, and sales promotion (not involving sales of merchandise), are deemed to be taxable transactions, except those services specifically exempt therefrom by Part I of Chapter 212, F.S., subject to the conditions appertaining to such exemption.

(15) Business services enumerated in SIC Major Group Number 7399, such as agents and brokers (for artists and authors), copyright protection service, music copying service, playwrights brokers, radio broadcasting music checkers, and radio transcription service, are deemed to be taxable transactions, except those services specifically exempted therefrom by Part I of Chapter 212, F.S., subject to the conditions appertaining to such exemption.

(16) Services enumerated in SIC Group Number 899, such as authors, radio commentators, song writers, weather forecasters, writers, and artists working on their own account, are deemed to be taxable transactions, except those services specifically exempt therefrom by Part I of Chapter 212, F.S., subject to the conditions appertaining to such exemption.

(17) The amount derived by entertainers or performers is subject to tax when these services are performed in Florida, except as described in Rule 12-ER-87-11(16).

(b) Use tax will be due on such services performed outside Florida for the benefit of a purchaser in Florida or a purchaser doing business in Florida.

(18)(a) Commissions received by managers or agents of entertainers or performers for the manager's or agent's services in Florida are subject to tax, except as described in 12-ER-87-11(16).
(b) Use tax will be due on such services performed outside Florida for the benefit of a purchaser in Florida or a purchaser doing business in Florida.

Specific Authority 212.17(6), 212.18(2) FS.; Section 33, Chapter 87-6, Laws of Florida.

Law Implemented 212.06(5)(f)(12), FS, Sections 3, 7, 8, 12 and 14, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-46 Religious, Charitable, Scientific, Educational and Veterans' Institutions and Organizations; Federal and State Chartered Credit Unions; State Theater Program Facilities; Florida Retired Educators Association and its Local Chapter; Volunteer Fire Departments; Organizations providing Special Educational, Cultural, Recreational, and Social Benefits to Minors; Military Museums; Homes for the Aged, Nursing Homes or Hospice.

(1) The sale of a service by those exempt institutions or organizations enumerated in paragraphs (1)(b), (e) and (g) is taxable, unless the services are specifically exempt from tax, see 12-ER-87-11. The sale of any service by those exempt institutions or organizations enumerated in paragraphs (1)(a), (c), (d) and (f) are specifically exempt from tax, as indicated below.

(a) A sale of a service directly to or by churches is exempt.

(b) A sale of a service directly to a nonprofit religious, nonprofit educational, nonprofit scientific, nonprofit charitable institution or organization, for use in the course of its customary nonprofit religious, nonprofit educational, nonprofit scientific, nonprofit charitable activities, including those of church cemeteries, is exempt. The sale of services by any nonprofit religious organization described in SIC Industry Number 866, when provided in carrying out its customary nonprofit religious activity, is exempt.

(c) A sale of a service is exempt if made directly to or by nonprofit organizations incorporated in accordance with Chapter 617 which have qualified under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, which have been designated as State Theater Program facilities as provided in s. 265.287.
(d) A sale of a service is exempt if made directly to
or by nonprofit corporations which hold current exemptions
from federal corporate income tax pursuant to s. 501(c)(3),
U.S. Internal Revenue Code, 1954, as amended, and which
either qualify as homes for the aged pursuant to s.
196.1975(2) or are licensed as a nursing home or hospice
under the provisions of Chapter 400.

(e) A sale of a service made directly to the state
headquarters of veterans' organizations and the state
headquarters of their auxiliaries when used in carrying out
their customary veterans organization activities, is exempt.
If an auxiliary does not maintain a permanent state
headquarters, the transactions involving sales or leases
used to maintain the office of the highest ranking state
official are exempt.

(f) A sale of a service directly to or by nonprofit
organizations providing special educational, cultural,
recreational and social benefits to minors which are
incorporated pursuant to Chapter 617 or which hold a current
exemption from federal corporate income tax pursuant to s.
501(c)(3), United States Internal Revenue Code, whose
primary purpose is providing activities which contribute to
the development of good character, good sportsmanship, or to
the educational or cultural development of minors in this
state is exempt. This exemption is extended only to that
level of the organization located in Florida that has a
salaried executive officer or an elected non-salaried
executive officer.

(g) A sale of a service directly to nonprofit
corporations which hold a current exemption from federal
corporate income tax pursuant to s. 501(c)(3), United States
Internal Revenue Code, 1954, as amended, whose primary
purpose is to raise money for military museums is exempt.

(h) Institutions or organizations desiring to qualify
for these exemptions must obtain from the Department of
Revenue a Consumer’s Certificate of Exemption (DR-5) which shall be presented at the time of sale directly to the dealer. Additionally, payment must be made directly to the dealer by the exempt entity. This exemption shall not inure to any transaction otherwise taxable when payment is made by an exempt entity’s employee by any means including but not limited to cash, check or credit card whether or not the employee is subsequently reimbursed by the exempt entity.

(i) To procure a Consumer’s Certificate of Exemption (DR-14) the exempt entity shall file an Application for Consumer Certificate of Exemption (DR-5) with the Department of Revenue. Applications for Consumer’s Certificate of Exemption (DR-14) are available, without cost upon written request directly to the Department of Revenue, Supply Section, Tallahassee, Florida 32399-0100. Upon formal approval of the application, the Department shall issue a Consumer’s Certificate of Exemption (DR-14). The effective date of the Consumer’s Certificate of Exemption (DR-14) shall be the postmark date of the application for Consumer Certificate of Exemption (DR-5), if mailed, or the date received by the Department, if delivered by means other than mail.

(2) Political subdivisions of the state and public libraries which qualify for and maintain a current Consumer’s Certificate of Exemption (DR-5) shall utilize their sales tax exemption certificates to purchase with funds provided by the following group services necessary for the operation of such groups, in addition to the normal exempt purchases that political subdivisions and libraries are empowered to make:

(a) School districts shall purchase on a tax exempt basis necessary services requested by parent-teacher organizations.

(b) Counties and municipalities shall purchase on a tax exempt basis necessary services requested by REACT groups.
neighborhood crime watch groups, and state or locally
recognized organizations solely engaged in youth activities
identical to those discussed in paragraph (f) of subsection
(1) of this rule.

(c) Public libraries shall purchase on a tax exempt
basis necessary services requested by groups solely engaged
in fund-raising activities for such libraries.

(3) A Chamber of Commerce is not entitled to exemption
on its purchases of services as it is not a religious,
educational or charitable institution. The funds derived
from the cities and counties by taxation paid to the Chamber
of Commerce do not exempt it on the expenditure of those
funds unless the service is purchased directly by the city
or county.

(4) Sales to civic, commercial, cooperative, fraternal,
social, labor and veterans organizations (except sales to
state headquarters of nationally chartered veteran
organizations) are not exempt under Part I, Chapter 212,
F.S. Services sold to them are taxable, unless specifically
exempt under Part I of Chapter 212, F.S., in the same manner
as those made to other dealers. However, membership dues
and membership fees to such organizations are not taxable.
see 12-ER-87-11(15)(a)4.

(5) Sales of services to or purchases of services by
federally chartered and state chartered credit unions are
taxable. The sale of services by federally chartered and
state chartered credit unions are taxable to the extent that
those services are taxable. see 12-ER-87-13.

(6) Sales of services to the Florida Retired Educator's
Association and its local Chapters are taxable.

(7) Sales of services to volunteer fire departments are
taxable.

(8) Holders of Consumer Certificates of Exemption
(DR-14) who provide services taxable under s. 212.059 must
register with the Department by filing a DR-1 and must
obtain a Certificate of Registration.
Specific Authority 212.17(6), 212.18(2) FS.; Section 33.
Chapter 87-6 Laws of Florida.
Law Implemented 212.08(7) as amended by Section 14, Chapter
87-6, Laws of Florida, 213.12 FS.
History - New 7-1-87.
12-ER-87-47  Film Rentals.

(1)(a) Film rentals are exempt from tax when an admission is charged for viewing such film.

(b) License fees and direct charges for films, video tapes and transcripts used by television or radio stations or networks are exempt from tax.

(c) However this exemption shall not be construed to exempt the sale, rent, or use of films for advertising.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 6 and 14, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-40  Fisheries.

(1)(a)  Nets and materials, and parts used in the repair thereof, are exempt when used exclusively by commercial fishermen. (Sponge fishermen qualify as commercial fishermen.) To purchase such nets tax exempt, a certificate in substantial conformity with the certificate suggested in Rule 12A-1.039 must be executed.

(b) Effective July 1, 1987, the labor to repair nets used by commercial fishermen are fully taxable.

(2) Where the transaction involves both the sale of a taxable service and the sale of an exempt item, the transaction must be separately identified and stated with respect to the taxable service and the exempt portion of the transaction as a condition to exempt the exempt portion of the transaction. If the exempt portion is not separately stated and identified the total transaction will be presumed to be for labor services and taxable, see 12-ER-87-5.

(3) The sale of charter boats, party boats, pleasure fishing boats is fully taxable. Equipment, materials, parts and labor used to repair and maintain such boats and equipment are fully taxable without proration.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 2 and 3, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-49  Governmental Units.

(1) All sales, including sales of service, made direct to the United States Government, a state, the State of Florida or any county, municipality or political subdivision of a in this state are exempt, except machines, equipment, parts and accessories thereof used in the generation, transmission or distribution of electrical energy, when payment is made directly to the dealer by the governmental entity. However, such governmental entities desiring to qualify for the exemption must obtain from the Department of Revenue a Consumer's Certificate of Exemption (DR-5). This exemption shall not inure to any transaction otherwise taxable when payment is made by a government employee by any personal means, including but not limited to, cash, check or credit card when the employee is subsequently reimbursed by the governmental entity. The exemption provided in this subsection shall be strictly defined, limited and applied to each entity as provided herein. For sale of services by governmental entities, see Rule 12-ER-87-11(8) and 12-ER-87-23.

(2) To procure a Consumer's Certificate of Exemption (DR-5) the exempt entity shall file an Application for Consumer Certificate of Exemption (DR-14) with the Department of Revenue. Applications for Consumer's Certificate of Exemption (DR-5) are available, without cost upon written request directly to the Department of Revenue, Supply Section, Tallahassee, Florida 32399-0100. Upon formal approval of the application, the Department shall issue a Consumer's Certificate of Exemption (DR-5).

(3) See also for construction Rule 12-ER-87-31.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law implemented Sections 3 and 14, Chapter 87-6, Laws of
Florida.

History - New 7-1-87.
12-ER-87-50 Newspapers, Magazines and Periodicals.

(1)(a) Effective July 1, 1987, the purchase of or retail sale of copies of newspapers, magazines and other periodicals is taxable at the retail price.

(b)1. Subscriptions to newspapers, magazines and periodicals are taxable when, at any time during the subscription period, a copy or copies are transported from a point of origin in this state to a destination that is also in this state or where a copy or copies are transported from a point of origin outside this state to a destination in this state. Such subscriptions are exempt when the point of destination is outside this state, see Rule 12A-1.064(2), F.A.C.

2. If a subscription to a newspaper or to a magazine which was entered as second class mail and sold for an annual or longer period of time, was issued and paid for, or contractually obligated to be paid, prior to July 1, 1987, the subscription is not subject to tax even though the payments may be received after July 1, 1987. However, any new subscription or renewal of an existing subscription after July 1, 1987, is taxable.

(c) The sale of advertising by newspapers, magazines and periodicals in for advertisements are taxable.

(d) Effective July 1, 1987, circulars, flyers, advertising supplements or like publications which are distributed with a newspaper are taxable as advertising material when purchased by the person doing the advertising notwithstanding the fact that such advertising material may be printed by the newspaper or may be shipped directly from the printer to the newspaper company and the advertising material carries the newspapers masthead, gang logo, supplement line or any equivalent thereof.
(e) The charges the newspaper company makes to the
advertiser for stuffing and/or delivering advertising
material with the newspaper is a taxable service.

(f) Sales by a press clipping service of its clippings
are taxable.

(g) The purchase of newspapers, magazines and
periodicals to be given away is taxable.

(h) A printer (dealer) who operates a printing plant in
which printed matter is manufactured for his own use shall
pay a tax based upon the “cost price” as defined in m.
212.02(5), F.S., as amended by Chapter 87-6, L.O.F.
consumption, or for use in connection with fulfilling
contracts, is taxable upon all materials going into the
manufactured product. Costs of labor, power and other plant
expenses incurred with respect to such items of tangible
personal property are taxable.

(2)(a) Whenever a newspaper company sells its
newspapers to an independent contractor (carrier) and in
assisting its carriers, totally bills or invoices all the ultimate
consumer at the retail subscription price or at the retail
price of the newspaper and collects the same, the newspaper
company will be liable for collecting and remitting the
appropriate tax. In this instance, the carrier is not
required to register as a dealer.

(b) However, whenever a newspaper company sells its
newspapers to a carrier and the carrier bills its customers
and collects the same, the carrier must:

1. register as a dealer with the Department of
Revenue;
2. submit a resale certificate at the time of purchase
to the newspaper company to buy newspapers tax exempt for
resale. If the carrier fails to present a resale
certificate to the newspaper company or the newspaper
company fails to maintain such properly completed resale
certificates, the newspaper company must charge tax on its
sales to the carrier and such tax must be on the retail price. In addition, the tax would be due on the ultimate sale of the newspaper by the carrier; and

3. charge, collect and remit the appropriate tax to the Department of Revenue.

(3) The tax must be separately stated as Florida sales tax on the customer's charge ticket, invoice, or other tangible evidence of sale.

(4) Sales of newspapers or magazines by the newspaper company or its carriers to retail outlets are taxable, unless the retail outlet provides the newspaper and its carrier with a resale certificate at the time of sale, see Rule 12A-1.039, F.A.C.

(5) Whenever the newspaper company or its carriers, that are required to register as dealers, sells newspapers through vending machines (rack sales), the newspaper company or its carriers will be considered to be in compliance with the law if they remit tax at the effective rate of 6.75 percent of their gross sales. To compute the correct amount of tax due, the newspaper company or its carriers should divide their total receipts from their machines by 1.0675 to compute their gross sales and then subtract their gross sales from the total receipts to arrive at the amount of tax due. This 6.75 percent effective tax rate recognizes multiple sales and the difference in price between daily and Sunday newspapers. The tax must also be separately in a conspicuous place on the face of such vending machine.

(6) The purchase of newspaper vending machines and the repair thereof are taxable.

(7) When a newspaper, magazine or periodical rack is placed on real property or tangible personal property under a contract or similar provision which grants the rack owner the right to use or occupy such property for a consideration, the portion of the proceeds from the operation of the newspaper rack paid to the owner, lessor or
other person granting the newspaper rack owner or operator
the right to use or occupy the real property is taxable as
payment for a license to use real property or tangible
personal property. This tax shall be in addition to the
total amount of tax due and payable on the receipts from the
newspaper rack.

(8) Newspaper delivery service provided to the
publisher or printer of a newspaper are exempt.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.

Law Implemented 212.031, 212.05 FS.; Section 1 and 5,
Chapter 86-166, Laws of Florida. Section 6, Chapter 87-6,
Laws of Florida.

History - New 7-1-67.
12-ER 87-51  Radio and Television Stations.

(1) The sale of radio and television equipment, including expendable items, parts, accessories and supplies, is taxable.

(2) Effective July 1, 1987, the following are taxable:

(a) The charge for wired music service. Tax is also due on all equipment purchased to render the service, including all recordings of music, songs, speeches, etc., and all other tangible personal property purchased to be used in connection with such service;

(b) Payments to such stations for advertisements, see 12-ER-87-44; and

(c) Charges to radio stations, for line charges and talent fees.

Specific Authority 212.17(6), 212.18(2) F.S.; Sections 6 and 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 6, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
DRAFT/SALES TAX EMERGENCY II 6-10-87

12-ER-87-52 Admissions.

(1)(a) Effective July 1, 1987, admissions to athletic
or other events sponsored by elementary schools, junior
high schools, middle schools, high schools, vocational
technical schools, community colleges, public or private
colleges and universities, deaf and blind schools,
facilities of Division of Youth Services and state
correctional institutions when only student, faculty, or
inmate talent is utilized are exempt, taxable. However,
this exemption shall not apply to admission to athletic
events sponsored by an institution within the State
University System and the proceeds of the tax collected on
such admissions shall be retained and utilized by each
institution to support women's athletics as provided in s.
240.533(4)(c), F.S.

(b) When tickets are sold, the tax on admissions is due
under the brackets outlined in s. 212.12, F.S. The amount
of the tax shall be printed on each ticket or, if desired, a
total selling price may be stated with the words “sales tax
included” printed directly under the over all price of the
ticket; see Rule 12A-1.005(4)(b), F.A.C. When tickets are
not used, the tax shall be due on the gross receipts for
admissions.

(b) Effective July 1, 1987, admissions paid by a
student, or on his behalf, to any required place of sport or
recreation are exempt, if the student's participation in the
sport or recreational activity is required as a part of a
program or activity sponsored by, and under the jurisdiction
of, the student's educational institution, provided his
attendance is as a participant and not as a spectator,
regardless of whether the student's participation in the
sport or recreational activity is required as a part of a
program or activity sponsored by and under the jurisdiction

269
of the student's educational institution.

(c) Through June 30, 1987, no tax shall be levied on dues, members fees and admission charges imposed by not-for-profit sponsoring organizations or community or recreational facilities. To receive this exemption, the organization making any such charges for dues, membership fees and admissions must qualify as a not-for-profit entity under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended. Effective July 1, 1987, no tax shall be levied on dues, membership fees and admission charges imposed by not-for-profit religious sponsoring organizations. To receive this exemption, the sponsoring organization must qualify for a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1954 as amended. Such dues, membership fees and admissions are taxable unless otherwise provided by law, see 12 ER 87-11(15).

(d) Through June 30, 1987, no tax shall be levied on any charge for admission by any organization described in Section 170(c) of the Internal Revenue Code of 1954, as amended, to live performances of ballet, dance, or choral performances, concerts (instrumental and vocal), plays (with and without music), operas and readings, ocean science centers, museums of science, historical museums and botanical and zoological gardens, and exhibitions of paintings, sculpture, photography, graphic and craft arts. Effective July 1, 1987, unless expressly exempted herein, such charges are taxable.

(e) Effective July 1, 1987, no tax is levied on admissions to athletic or other events sponsored by governmental entities.

(2)(a) The term "admissions" means and includes the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport or recreation or for the privilege of
entering or staying in any place of amusement, sport or
recreation, including but not limited to theatres, mini
theatres, outdoor theatres, shows, exhibitions, games, races
or any place where a charge is made by way of sale of
tickets, gate charges, seat charges, box charges, season
pass charges, cover charges, green fees, participation fees,
entrance fees or other fees or receipts of anything of value
measured on an admission or entrance or length of stay or
seat box accommodations in any place where there is any
exhibition, amusement, sport or recreation and all dues paid
to private clubs providing recreational facilities,
including but not limited to golf, tennis, swimming,
yachting and boating facilities.

(b) Effective July 1, 1987, the term “admissions”
includes any charge for entering or staying upon any boat or
vessel for the privilege of fishing.

(c) Admissions to county, state and regional
agricultural fairs are exempt through June 30, 1987.
Effective July 1, 1987, admissions to such events are
taxable unless sponsored by a governmental entity.

(d) Where the boat owner supplies the crew which
remains under the control and direction of the owner and
makes a charge measured on an admission or entrance or
length of stay aboard the vessel for the privilege of
participating in a sport or recreation, the charge is
taxable as an admission.

(e) Charges measured on an admission or entrance fee
for the privilege of participating in a recreational or
sightseeing trip in an aircraft, boat, including dinner
boat, or bus, are taxable.

(f) Dues paid by persons for membership in clubs, such
as sewing clubs, bowling clubs, square dancing clubs, bridge
clubs and gun clubs, which provide no recreational or other
facilities for its members, are exempt from tax on
admissions through June 30, 1987, but, effective July 1,
1987. such amusement or recreational dues are subject to
tax. regardless of whether such facility is furnished for
its members. see 12-ER-87-11(10) and 12-ER-87-33. Any
charge made by any such club for admission to any event
conducted or sponsored by the club is taxable.

Specific Authority 212.17(6), 212.18(2) P.S.; Section 33,
Chapter 87-6 Laws of Florida.

Law Implemented Section 1, Chapter 86-166, and Section 7,
Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-53 Professional, Insurance, or Personal Service Transactions.

(1) Effective July 1, 1987, professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made are taxable, unless specifically exempt under Part I of Chapter 212, see 12-ER-87-11.

(2) The taking of dictation by a public stenographer and stenographic transcriptions are taxable. Charges for attendance and the stenographic recording of proceedings at a trial, hearing, conference or similar function by a court reporter are taxable. Charges made by court reporters for transcripts of proceedings are taxable. Charges for transcripts to third persons who are not parties to the proceedings for which the reporter was engaged are taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-54  Resource Recovery.

(1) The exemption for resource recovery and equipment used in a facility owned and operated exclusively by or on behalf of any county or municipality scheduled to sunset July 1, 1987, has been reenacted, see Rule 12A-1.001(28), F.A.C. However, effective July 1, 1987, the installation labor to install such machinery and equipment is fully taxable.

(2) Where the transaction involves both the sale of both a taxable service and the sale of an exempt item, the taxable service and exempt item transaction must be separately identified and stated with respect to the taxable service and the exempt portion of the transaction as a condition to exempting the exempt item in portion of the transaction. If the exempt item portion is not separately stated and identified, the total transaction will be presumed to be for taxable labor services and taxable. See 12-ER-87-5 and 12-ER-87-31. See Rules pertaining to constructing or improving real property at a resource recovery facility.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1, 5 and 14. Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-55  Solar Energy.

The sale at retail, rental, use, consumption, distribution, or storage to be used or consumed in this state of a solar energy system or any component thereof as defined in Section 212.02(19), F.S., is exempt through June 30, 1987. Effective July 1, 1987, the sale, rental, use, consumption, distribution, or storage to be used or consumed in this state of a solar energy system or any component thereof is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Section 8, Chapter 86-166 and Section 25, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

12-ER-87-56 Charges by Dealers Who Adjust, Apply, Alter, Install, Maintain, Remodel or Repair Tangible Personal Property; Interior Decorator Charges; Wrecker and Towing Charges.

(1) Effective July 1, 1987, the total consideration for labor or material used to alter, remodel, maintain, adjust or repair tangible personal property is taxable.

(2) The total consideration for cleaning or regulating tangible personal property is taxable.

(3) Any charges by an interior decorator are taxable, whether materials or supplies are used, either as a sale or use of tangible personal property or as a charge for services.

(4) Wrecker or towing charges are taxable, whether or not the charge is separately stated on the customer's invoice. (See Rule 12-ER-87-11(47) for emergency road service)

(5)(a) Effective July 1, 1987, services used directly and exclusively for the maintaining, retrofitting, repairing, or replacing of industrial machinery and equipment at fixed locations are exempt if the machinery and equipment is used for the purposes described in paragraph (4) and provided no parts are used in providing such service.

(b) For purposes of this exemption, "industrial machinery and equipment" means section 38 property as defined in s. 48(a)(1)(A) and (B)(1) of the Internal Revenue Code of 1954, as amended, provided such industrial machinery and equipment is used as an integral part of the manufacturing, processing, compounding, or producing fabricating or preparing for shipment items of tangible personal property for sale.

(c) Such machinery or equipment must be used to
manufacture, process, compound, produce, fabricate, or prepare for shipment items of tangible personal property for sale.

(d) This exemption only applies to the tax imposed on such services in excess of $100,000 of tax during each calendar year. For the purposes of implementing this exemption the first calendar year shall be limited to July 1, 1987, through December 31, 1987. However, each calendar year thereafter shall mean January 1 through December 31.

(e) This exemption does not apply to services relating to machinery or equipment purchased or used by electric utility companies, communications companies, phosphate or other solid minerals severance, mining, or processing operations, oil or gas exploration or production operations, printing or publishing firms, any firm subject to regulation by the Division of Hotels and Restaurants of the State Department of Business Regulation, or any firm which does not manufacture, process, compound, or produce for sale items of tangible personal property.

(f) This exemption does not apply to the purchase of services related to industrial machinery and equipment when such services are included as a part of the purchase of tangible personal property or were subject to tax as part of a sale prior to July 1, 1987; and this exemption does not expand the exemptions provided in s. 212.08(5)(b)1. or 2. (relating to the sale or purchase of industrial machinery and equipment for new and expanding businesses) beyond their meaning prior to July 1, 1987.

(g) In order to qualify for this exemption, the business entity must comply with the following:

1. the business entity shall make application with the Department of Revenue for self-accrual of sales tax as provided in Section 32. Chapter 87-6. L.O.F.,

2. the business entity must pay sales tax in the amount of $100,000 during the calendar year for services
used directly and exclusively for the maintaining, retrofitting, repairing, or replacing of such industrial machinery and equipment before it is authorized to extend their direct pay authority to repair contractors in lieu of tax, and

3. the business entity must rescind the direct pay authority on January 1 of each year and must advise its repair contractors of such rescission until the business entity can demonstrate that it has paid the $100,000 in tax for the calendar year involved.

a. In lieu of this procedure the business entity may elect to pay the $100,000 in tax direct to the Department of Revenue on January 1 of each calendar year and leave in force the direct pay authority extended to its repair contractors.

(h) Definitions - The following terms and phrases when used in this rule shall have the meaning or usage ascribed to them as follows, except where the context clearly indicates a different meaning or usage:

1. "Fixed location" shall mean the state of being permanently affixed to one location or plant site, or any portable plant which may be set up for a period of not less than six months in a stationary manner so as to perform the same industrial manufacturing, processing, compounding, or production process that could be performed at a permanent location or plant site.

2. "Production Process" shall begin at the time raw materials are delivered on the property of the new or expanding facility and end after the product has been manufactured, processed, compounded, produced, fabricated or prepared for shipment for sale.

(i) Services performed on machinery and equipment which may qualify for exemption.

1. For the purpose of this exemption industrial machinery and equipment shall:
a. include special foundations for the support of qualifying machinery and equipment; and
b. include electrical wiring from the power panel box to the qualifying machinery and equipment.

2. Generally, the exemption for services performed on industrial machinery and equipment ends when the product produced is prepared for shipment for sale.

3. Services performed on quality control equipment installed within the production line as a part of the production activity and required to be performed on each item or article produced before the item or article can be sold qualify for the exemption.

4. Services performed for preproduction, random or postproduction quality control equipment which do not qualify as industrial machinery and equipment are taxable.

5. Services performed on machinery and equipment used predominately to remove waste materials from industrial machinery and equipment where the removal is required to maintain the operation of the machinery and equipment may also qualify for this exemption.

6. Services performed on conveyors or related equipment used to transport raw materials from the storage area to the production line qualify for this exemption.

7. Services performed on computers used exclusively to direct and control the functions of exempt industrial machinery and equipment may qualify as exempt. However, if the same computer or any part thereof is used to perform bookkeeping, accounting, sales reports, etc., services performed on the computer shall be fully taxable, without proration on account of use.

(j) Where any parts are purchased and used by the repairman in providing a service for the maintaining, retrofitting, repairing or replacing of industrial machinery and equipment, the total charge for such service shall be subject to tax.
(k) For the purposes of this rule any service performed on or to real property shall be subject to the tax without regard to the tax limitation set forth herein.

Specific Authority 212.17(6). 212.18(2) F.S.; Section 33.
Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 3, 5, 7, 12 and 13, Chapter 87-6, Laws of Florida.
History – New 7-1-87.
12-ER-87-57  Medical Exemptions.

(1)(a) Sales, rentals, and repair services of orthopedic shoes are exempt from tax. For purposes of this exemption, an orthopedic shoe is one needed by an individual to alleviate the malfunction of any part of the body or to assist any disabled person in leading a normal life by facilitating such individual's mobility.

(b) To be exempt, there must be a demonstration of a bona fide need for the orthopedic shoe by either:

1. A prescription written by a person authorized by law to prescribe medicinal drugs or other health aids; or

2. A statement dated and signed both by the individual to whom the shoe was sold or rented, or for whom the repair is performed and by the seller, lessor, or repairer of the shoe describing the physical condition for which the orthopedic shoe is needed and the special features of the shoe qualifying it as an orthopedic shoe. This statement must be maintained in the seller's or repairer's records to evidence the exempt sale.

(2) Effective July 1, 1987, feminine hygiene products including, but not limited to, sanitary panties, sanitary belts, sanitary napkins, and tampons are taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Section 5, Chapter 86-166 and Section 14, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-58  Aircraft, Boats, and Motor Vehicles.

(1) The exemption for boats sold by or through a registered dealer to a Purchaser who removes such boat from this state within 10 days after the date of sale or, when the boat is repaired or altered, within 10 days after completion of such repairs and alterations, as authorized pursuant to s. 212.05(1)(a)2., F.S., is reenacted, see Rule 12A-1.007(1)(c)). Effective July 1, 1987, the exemption is also applicable to the sale of aircraft.

(2) The tax applies to all sales of aircraft in this state unless the selling dealer is the holder of a valid dealer's Certificate of Registration (DR-11) which authorizes the dealer to sell aircraft and the sale is made under the following conditions:

(a) The purchaser removes such aircraft from this state within 10 days after the date of purchase. It shall be the duty of the dealer who sells the aircraft to obtain from the purchaser, and retain in his records, written proof that the aircraft was in fact removed from this state within the 10-day time limit specified in this subsection. Invoices for fuel, tie-down charges or hangar charges issued by out-of-state vendors which specifically identify the aircraft, including the FAA registration number, will provide evidence that the aircraft was removed from Florida within the 10 day period and will be acceptable proof for purposes of this rule:

(b) The aircraft is altered or repaired after the sale and the purchaser removes such aircraft from this state within 10 days after completion of repairs or alterations. In no event shall the aircraft remain in this state more than 90 days after date of purchase. When the aircraft is altered or repaired, whether by the dealer who sold the aircraft or by a repair facility registered with the
Department of Revenue, it shall be the selling dealer’s or
the repairing dealer’s responsibility to obtain from the
purchaser written proof as specified in paragraph (a) of
this subsection that the aircraft was in fact removed from
this state within the 10-day time limit specified in this
rule;

(c) Provided that in either paragraphs (a) or (b)
above, the dealer obtains from the purchaser within 90 days
from the date of sale written proof that the purchaser
licensed, registered, or documented the aircraft outside
this state; and,

(d) The selling dealer obtains from the purchaser, and
makes it a permanent part of his records, an affidavit,
executed at the time of sale, in which the purchaser attests
to the fact that he has read the statute, states the
specific reason for claiming exemption, that he will remove
the aircraft from this state within the time limit set in
this rule, that no use will be made of the aircraft in this
state other than to expeditiously move the aircraft from the
point of delivery to the repair facility and that the
aircraft will be removed from this state within 10 days
after completion of the repairs or alterations. The
following is a suggested affidavit to be completed by the
purchaser and presented to the seller:

Suggested form of affidavit:

Affidavit for exemption of aircraft sold
for removal from the state of Florida by the
purchaser

State of Florida )  Affidavit
County of_______ )

Personally appears the below named affiant, who being duly
sworn, deposes that he has read section 212.05, F.S., and
the Florida Department of Revenue’s rule and claims
Exemption under the rule from Florida sales and use tax on the purchase of the aircraft designated below for the following reason:

Name of Purchaser

Purchaser's Permanent Address

(Street) (City) (State)

Name of Selling Dealer

Address of Selling Dealer

(State) (Street) (City)

Selling Dealer's Florida Sales and Use Tax Registration Number

Date of Sale

(Month) (Day) (Year)

Description of Aircraft

Make Model Year

Serial Number(s)

New Used

Engine

Name, State Registration, or Aircraft Identification Number

U.S. Department of Transportation Identification Number

Sales Price Trade-In Allowance Net Amount Paid

( ) Aircraft will be removed by me or my designated agent from the State of Florida within 10 days of date of purchase.

( ) Aircraft is to be repaired or altered and will be removed from the State of Florida by me or my designated agent within 10 days after completion of the repairs or
alterations consistent with Chapter 212.05, Florida Statutes.

(Signature of
Purchaser)

Sworn to and subscribed before me
this_______ day of__________, 19____.

(Notary Public for Florida)

Original to be retained by selling dealer
1st copy to be submitted with Sales Tax Return
2nd copy Purchaser's copy

(e) The sale of an aircraft by any "person," as defined in Section 212.02(17), Florida Statutes, who does not hold a valid vehicle dealer's certificate of registration issued by the Florida Department of Revenue is not exempt from the tax and the Department may proceed against the purchaser for the collection of the tax.

(f) In the event that the selling dealer shall fail to obtain or the purchaser shall fail to furnish the dealer with the documents required under this rule, the Department may proceed against either the dealer, the purchaser, or both for payment of the tax.

(g) Any purchaser who claims exemption from payment of the tax under this rule and who fails to remove his aircraft from this state within the time limits specified in this rule, or who permits the aircraft to return to this state within 6 months from the date of departure from this state, shall be liable for payment of the tax, plus interest and the mandatory penalty equal to the tax, which penalty is in lieu of the penalty provided in Section 212.12(2), Florida

285
Statutes.

(h) Notwithstanding the above provisions of this rule, the owner of a aircraft may permit his aircraft to be returned to this state for warranty repairs within 6 months from the date of departure without being in violation of the law and without incurring liability for payment of tax or penalty on the purchase price of the aircraft; provided, that he removes the aircraft from this state within 10 days of the completion of the warranty repairs and can prove that he did so by invoices for fuel, tie-down or hangar charges issued by out-of-state vendors or suppliers which specifically identify the aircraft and which are dated within 10 days after completion of said repairs.

(4) The charge for an auto wash job, in which nothing is added to the water except a detergent or water softener, is subject to tax beginning July 1, 1987. When silicones, or any other substances are added that forms a protective film, the charge for the entire job is subject to tax.

(5)(a) Effective July 1, 1987, the provisions which allow motor vehicle operators owners/lessors the option of paying the tax up front on long term leases (12 months or more) when the lease is to one lessee or collecting the tax on the lease payments have been repealed, except as indicated in paragraph (c) below.

(b) The purchase of motor vehicles exclusively for rental purposes may be made tax exempt when the purchaser/lessor issues a resale certificate to the dealer at the time of purchase in lieu of paying tax. The lessor shall collect tax from his customers on the total rental charge.

(c1) In the case of commercial motor vehicles which are self propelled or towed and used on the public highways in commerce to transport persons or cargo having a gross weight of 10,000 pounds or more, when the term of the lease or rental to any lessee is for a period of 12 months or
more, the owner/lessor may pay the Florida tax on the
acquisition of the motor vehicle. In such cases, the rental
to the initial lessee and renewals thereof to the same
lessee are not subject to the rental tax. The rental of the
same commercial motor vehicle to subsequent lessees by the
owner/lessor is taxable.

2. When the owner/lessor who is not subject to the
exemption provided in (5)(c)1. above has exercised the
option of paying the tax up front on the acquisition of any
motor vehicle and has entered into a long term contract with
a lessee prior to July 1, 1987, then the owner/lessor may
continue with that option for the duration of that contract.
However, lease payments on any new contract or renewal of
the existing contract, will be subject to tax and the
owner/lessor will not be entitled to a credit for the tax
paid on the acquisition of the leased motor vehicle.

(d) In all cases set out above, the subsequent sale of
the motor vehicle, by the owner/lessor is taxable except
when the vehicle is sold for resale.

(e) Subleases of leased motor vehicles are subject to
the tax.

(6) Effective July 1, 1987, the charge made by an air
taxi (charter) to transport a passenger to a certain
destination (the passenger does not pilot or take possession
of the airplane) is a taxable service. The purchase of an
airplane for such use is taxable.

(7) Effective July 1, 1987, the charge for flight
instruction, which includes supervised solo flights is
taxable. The purchase of an airplane for this use is
taxable.

(8) Effective July 1, 1987, wrecking charges
are taxable, even if the charge is separately stated on the
customer's invoice. (See Rule 12-ER-87-11(47) for emergency
road services)
Specific Authority 212.17(6), 212.18(2) F.S.: Section 33.
Chapter 87-6 Laws of Florida.

Law Implemented Sections 1, 10 and 14. Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87 59  Sales, Installation Charges.

"Sales price" means the total amount paid for tangible personal property, or services, including any services that are a part of the sale, and tangible personal property that is part of the service, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses, or any other expense whatsoever. "Sales price" also includes the consideration for a transaction which requires labor or material to alter, remodel, maintain, adjust or repair tangible personal property. Trade-ins or discounts allowed and taken at the time of sale shall not be included within the purview of this rule.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 5 and 7, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-60  Finance and Interest Charges and Carrying Charges on Installment Sales.

(1) The amount paid by any purchaser as interest or as a finance charge is taxable as part of the sale price of the property, unless such interest or finance charge is separately stated from the consideration received for the tangible personal property transferred in a retail sale. For example, where articles are sold in a taxable transaction under an installment payment arrangement, retail retained title contract or purchase money mortgage for a stated amount payable in installments, the entire amount is taxable as part of the sale price of the property. If, on the other hand, a cash selling price is stated and interest and carrying charges are added thereto as separate and distinct items, only the cash selling price is taxable as part of the sale price of the property.

(2) Late fees in the nature of a penalty, if separately stated, are not taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 2 and 3, Chapter 87-6, Laws of Florida.
History New 7-1-87.
Fabrication of Tangible Personal Property
for Others.

(1) Charges by dealers including, but not limited to, labor, replacements, materials and supplies to adjust, apply, alter, install, maintain, remodel or repair tangible personal property belonging to others are fully taxable.

(2) Charges by dealers to sandblast tangible personal property belonging to others are fully taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 2 and 12, Chapter 87-6, Laws of Florida.

History New 7-1-87.
12-ER-87-62  Monuments and Tombstones.

(1) The building of a mausoleum is the construction of real property, and the builder is the consumer of the materials and supplies used in the construction and is responsible for remitting the tax on such materials and supplies. Effective July 1, 1987, the builder is a dealer with reference to the sale or use of his services, see 12-ER-87-31.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 7, Chapter 87 6, Laws of Florida.

History - New 7 1-87.
12 ER 87 63 Sales to Persons Engaged in Printing.

Photo and news services are exempt through June 30, 1987, but are taxable beginning July 1, 1987, see 12 ER 87 11. Provided however that photographic services performed directly in connection with the production of qualified motion pictures are exempt, see 12 ER 87 11(16).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 7, Chapter 87-6, Laws of Florida.

History New 7-1-87.
DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

12 ER 87 64 Funerals.

(1) When an auto rental corporation rents private cars, station wagons or other motor vehicles to funeral homes on a monthly charge and funeral homes provide their own drivers, the transaction is a lease of tangible personal property and is taxable.

(2) When an auto renting company rents hearses to funeral homes for funerals and supplies the driver, the renting company is performing a service that is exempt from tax.

(3) The charge by a funeral home for ambulance service is exempt.

(4) If a rental company furnishes a motor vehicle, including a limousine, with driver to another rental concern which in turn furnishes the vehicle and driver to a funeral home, the charge is for a service and is taxable, unless the second rental concern furnishes the first rental company a resale service purchase permit, see 12-ER 87 45.

(5) Services for funerals, such as those provided by the funeral director, musician or clergy, even though compensated, are exempt.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented 212.08(2)(a), F.S.; Sections 3 and 14.

Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12 ER 87 65  Furniture and Storage Warehousemen.

(1) Warehousemen customarily engaged in the business of renting space for storing tangible personal property belonging to other persons are subject to the tax on rentals and the gross proceeds derived therefrom are taxable, except as provided in 12 ER 87 11(4). However, where a warehouseman stores such property as a bailment, it is an exempt service.

(2b) The sale of crating, boxing, packaging and packing materials for use by a warehouseman in renting such space or in the performance of a warehouse bailment service is taxable, and the seller of such materials to a warehouseman shall collect and remit tax on such sales.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87 6 Laws of Florida.
Law Implemented Sections 3, 7 and 8, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-66  Sales of Containers, Wrapping and Packing
Materials and Related Products.

(1) Sales of materials, containers, labels, sacks, or bags intended to be used one time only for packaging tangible personal property for sale, or for packaging used in providing a taxable service are exempt. However, sales of packaging used in providing an exempt service are taxable.

(2) The purchase of crating, boxing, packaging and packing materials for use by a warehouseman in renting warehouse space or in the performance of warehouse bailment services is taxable. The seller of such materials shall collect and remit tax on such sales.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law implemented Sections 212.02(19)(a)4. F.S., as created by Section 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-67 Sales by Photographers, Photofinishers and Photostat Producers, Photoengravers and Wood Engravers.

(1) Total fees charged, including both sitting fees and photographs, by photographers are taxable.

(2) Total fees charged by architects, including charges for professional services and for blueprints, models, and other tangible personal property, are taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33.
Chapter 87-6 Laws of Florida.
Law Implemented Section 1, Chapter 87-6, Laws of Florida.
History New 7-1-87.
12-ER-87-68  Valet Service.

The total charge made by a hotel or motel to customers for cleaning, laundry and garment services are taxable including any valet or other service charges. Effective July 1, 1987, cleaning, laundry and garment services cannot be purchased for resale tax exempt unless the provisions of 12 ER-87-4 are met.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of Florida.

History New 7/1/87.
12-ER 87-69  Manufacturing.

(1) Fabrication labor shall not be taxable when a person is using his own equipment and his own personnel, for his use, as a producer, subproducer, or coproducer of a qualified motion picture prepared for showing on the screens or through television, theatrical, commercial, advertising, or educational purposes. See 12-ER 87-4142(16).

(b) "Qualified motion picture" means all or any part of a series of related images, either on film, tape or other embodiment, including, but not limited to, all items comprising part of the original work and film related products derived therefrom as well as duplicates and prints thereof and all sound recordings created to accompany a motion picture, which is produced, adapted or altered for exploitation in, on or through any medium or device and at any location, primarily for entertainment, industrial or educational purposes, see 12-ER-87-4142(16).

(2) In regard to the manufacturing and sale of factory built buildings, see 12-ER 87-31.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 3, 5 and 12, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-70 Florists.

Any service provided by a florist for compensation, such as consultation in planning decorations for special events, is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-71  Sale of Agricultural Products—including Poultry and Livestock.

(1)(a) The term "ornamental nursery stock" applies to all plants, shrubs and trees customarily sold by nurseries for landscaping purposes and includes plants, shrubs and trees that may bear edible nuts, fruits and berries; provided however, that such term shall not include plants, trees or shrubs sold to a commercial farmer for use on his own farm in producing a crop for sale.

(b) The sale of ornamental nursery stock by the producer to anyone for any purpose other than resale is subject to the tax. All sales of ornamental nursery stock will be presumed to be retail sales and subject to the tax, unless the seller shall have obtained a resale certificate from his customer in accordance with the provisions contained in the Florida Department of Revenue Rule 12A-1.038 and Rule 12A-1.039 or, in the case of an out-of-state dealer, an affidavit in accordance with the provisions contained in Rule 12A-1.064(23).

Example: The sale by the producer of ornamental nursery stock (regardless of state of growth or maturity) to a broker, wholesaler or retailer will be regarded as a retail sale and taxable unless the purchaser furnishes the seller with a resale certificate or affidavit as provided hereinabove.

(c) A landscape contractor who purchases ornamental nursery stock to fulfill a lump sum, cost plus, fixed fee or guaranteed price contract for the improvement of realty is construed to be the consumer of such nursery stock and he is liable for the sales tax at the time of purchase. A person who fulfills a contract as above described should not collect the tax as such from his customer because the tax should be paid by the landscaper on all materials used in
fulfilling the contract. A landscaper who produces his own ornamental nursery stock or who obtains stock that he acquired without cost, such as by digging up wild plants in the woods, is not liable for the tax on such stock which he uses in fulfilling the aforesaid types of contracts. As to taxability of services of a landscape contractor on and after July 1, 1987, see 12-ER-87-31.

(d) A person who agrees by contract to sell specifically described and itemized materials and supplies at an agreed price or at the regular retail price and to complete the work either for an additional agreed price or on the basis of time consumed is deemed to be selling tangible personal property (ornamental nursery stock) at an agreed retail price and shall collect sales tax from his purchaser based upon the amount of the receipts from such sales, excluding installation charges if separately stated and if the sale is before July 1, 1987, see 12-ER-87-31. Sales tax applies even though all or part of the ornamental nursery stock is grown or obtained from its natural habitat for no consideration by the person completing the contract.

(e) Plants, shrubs, trees and other items of tangible personal property that a nurseryman donates in the course of his business to any person or organization shall be taxed at its cost. No tax is due on items donated which the nurseryman produces or acquires from its natural habitat without cost.

(2) Services for compensation of landscape architects, landscape contractors, and lawn care professionals and subprofessionals are exempt through June 30, 1987, but are taxable beginning July 1, 1987. See 12-ER-87-22 and 12-ER-87-31.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law implemented Sections 3, 5 and 7, Chapter 87-6, Laws of
Florida.

History - New 7-1-87.
12-ER-87-72  Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property.

(1) Such contractors may include, among others, building, electrical, plumbing, heating, painting, decorating, ventilating, paper hanging, sheet metal, bridge, road, landscape or roofing contractors and they may use one of the following methods in arriving at the total contract price:

(a) Contracts in which the contractor or subcontractor agrees to furnish materials and supplies and necessary services for a lump sum;

(b) Contracts in which the contractor or subcontractor agrees to furnish the materials and supplies and necessary services on a cost plus or fixed fee basis;

(c) Contracts in which the contractor or subcontractor agrees to furnish materials and supplies and necessary services with an upset or guaranteed price which may not be exceeded; and

(d) Contracts in which the contractor or subcontractor repairs, alters, improves or constructs real property and wherein he agrees to sell specifically described and itemized materials and supplies at an agreed price or at the regular retail price and to complete the work either for an additional agreed price or on the basis of time consumed.

2. When a contractor or subcontractor uses materials and supplies in fulfilling either a lump sum, cost plus, fixed fee, guaranteed price or any kind of contract except one falling in class (d) above, he becomes the ultimate consumer thereof. The person or dealer who sells such materials and supplies to such contractor or subcontractor is making sales at retail and is required to collect the tax from him based upon the receipts from such sales.

3. For transactions before July 1, 1987, in cases
falling in class (d) above, the contractor or subcontractor is deemed to be selling tangible personal property at an agreed retail price and shall collect tax from his purchaser based upon the amount of the receipts from such sales, excluding installation charges if separately stated. A dealer selling to such contractor or subcontractor must obtain a resale certificate in lieu of tax.

4. For transactions on and after July 1, 1987, contractors improving real property are considered the consumer of materials they purchase in every instance, and the installation and other services of contractors are taxable whether separately stated or not, see 12-ER-87-31.

5. Contractors, manufacturers or dealers who sell and install items of tangible personal property enumerated in Rule 12A-1.016, F.A.C., must collect tax on the full selling price, including any installation or other charges, even though such charges may be separately stated, even though the transaction occurred before July 1, 1987.

(2)(a) Contractors who operate manufacturing plants which make items of tangible personal property for their own consumption and use in the performance of contracts for the construction or improvement of real property are subject to tax upon the manufactured cost of such items. This includes the cost of all materials as well as the cost of labor, power, transportation, and other plant expenses.

(b) Fabrication labor incurred at the job site in the performance of repairing, altering, improving, or constructing real property is not subject to tax through June 30, 1987. Effective July 1, 1987, such labor is subject to tax, see 12-ER-87-31. For the purpose of this rule, "job site" means a temporary site where fabrication is performed for a specific job. This site becomes a permanent manufacturing plant site when fabrication is performed for any job other than the specific job for which the site was selected.
(3) Fallout shelters are improvements to realty. The materials are taxable to lump sum, cost plus, fixed fee or guaranteed price contracts.

(a) Where a unit is sold as a retail transaction, tax is to be paid by the purchaser to the dealer. In such cases, installation labor is exempt if separately stated through June 30, 1987, see 12 ER 87-31.

(b) If the exempt items in survival kits can be accurately separated as to the selling price, they are exempt. Otherwise, the total selling price of the kit is taxable.

(4) A septic tank manufacturer who enters into a contract to furnish and install a tank qualified under Rule 12A-1.051, F.A.C., as the consumer of the materials he uses in manufacturing the tank, but he must pay tax on the fabricated product. It has been determined that 60% of the installed price is a fair taxable basis. This applies to a new installation which includes a drain field. On drain field replacements, it is estimated that costs of materials approximate one-third of the total charge. For transaction occurring before July 1, 1987, the percentage of the installed contract price above the percentage is exempt. For transactions after that date, the provisions of 12 ER 87-31 shall apply.

(5) Glass dealers who enter into lump sum contracts to furnish and install window glass in buildings may operate under Rule 12A-1.051, F.A.C., and pay tax to their suppliers on the glass, putty and other materials used in the performance of such contracts; or they may charge the customer tax on 60% of the contract price to cover the sales price of the materials. For transactions occurring before July 1, 1987, the remaining 40% of the contract is exempt. For transactions after that date, the provisions of 12 ER 87-31 shall apply.

(6) If glass is cut and sold as a finished product, the
cost of labor is part of the sales price and is taxable.
Installation labor charges are exempt before July 1, 1987, but only if the article becomes a part of realty. On and
after July 1, 1987, there is no exemption for such compensated services, see 12-ER-87-31.

(7) The charge made by a sign company for advertisements appearing on any of the type signs referred to in paragraphs (23), (24) and (25) of Rule 12A-1.051, F.A.C., is exempt through June 30, 1987, but is taxable beginning July 1, 1987, see 12-ER-87-31.

(8) An awning which is sold and attached to realty by the seller loses its identity as tangible personal property and the installation labor charges are exempt if separately stated through June 30, 1987. Effective July 1, 1987, such labor charges are taxable, see 12-ER-87-31.

(9)(a) When a contractor pursuant to a contract to deepen channels or harbors hydraulically pumps the dirt on to spoil areas he is not deemed to be selling fill dirt; such charge is for moving the material from one location to another and is exempt through June 30, 1987, but is taxable effective July 1, 1987, see 12-ER-87-31.

(b) When a contractor enters into a contract to fill using materials, removed from state owned submerged land, the taxable basis will be the cost of materials, fuel, blasting, labor or other costs incurred by the contractor.

(10) Lump sum, cost plus, fixed fee or guaranteed price contractors are the ultimate consumers of ice machines which are attached to and become a part of realty and should pay tax to their vendors on the purchases of such machines. (See Rule 12A-1.016, F.A.C., for taxable status of portable ice machines.) However, effective July 1, 1987, the ultimate consumer of the contractor's services for purposes of determining taxability of the services depends on whether the construction is new construction or construction, other than new construction, see 12-ER-87-31.
(11) The charge made by a contractor for the furnishing, installation and subsequent removal of forms and related equipment used to hold and shape concrete on the job and for the construction of items such as floor slabs, joists, lintels, beams and columns is a charge for services rather than a rental of tangible personal property and is exempt through June 30, 1987. Effective July 1, 1987, such charge is taxable, see 12-ER-87-31. The contractor is liable for tax on his cost of all equipment so used.

(12) The manufacture of factory-built buildings by persons for their own use in the performance of contracts for the construction or improvement of real property is taxable, see 12-ER-87-31.

Specific Authority 212.17(6), 212.18(2) F.S.: Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Section 5, Chapter 87-6, Laws of Florida.

History: New 7-1-87.
Cemetery Organizations.

(1)(a) Cemetery organizations are dealers and must procure dealers' certificates of registration and collect the sales tax on sales of tangible personal property to the ultimate consumer. When such organizations brick up graves or construct foundations for monuments, etc., the provisions of 12-ER-87-31 shall apply.

(b) Church cemeteries are exempt on their purchases.

Cross Reference Rule 12A-1.026, F.A.C.

(2) Effective July 1, 1987, cemetery management services are taxable.

(3) Effective July 1, 1987, cemetery cleaning and upkeep services are taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law implemented Sections 5 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-74 Trading Stamps.

The amount charged by a trading stamp company to a dealer for the privilege of distributing trading stamps which are redeemable by the trading stamp company either in cash or premiums is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Section 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-75  Inspection Fees.

Effective July 1, 1987, the inspection fee charged and invoiced by the seller on telephones and power lines is taxable, regardless of whether such charge is made by an independent inspector.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Section 1, 7 and 10, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-76  Sales in Interstate and Foreign Commerce.

(1) Railroads and motor vehicles which are licensed as common carriers by the Interstate Commerce Commission and aircraft which are licensed by the U.S. Department of Transportation, vessels and parts thereof used to transport persons or property in interstate or foreign commerce are subject to tax on a pro rata basis as outlined in Rule 12A-1.064, F.A.C. This proration also applies to labor to repair such railroads, motor vehicles, aircraft and vessels whether or not the labor is separately stated from the parts.

(2) Transportation charges to transport property in interstate or foreign commerce are taxable as a service to the extent as outlined in 12-ER-87-34. The method used to prorate the taxable service in Florida is separate and distinct from the method used to calculate the tax on railroad, motor vehicles, aircraft, vessels and parts thereof.

(3) The lease, rental of railroad cars, and services related thereto, to a railroad company for use on its track is exempt, provided the rental charges are subject to jurisdiction of the United States Interstate Commerce Commission and are based on hourly, daily or mileage charges are exempt. Effective July 1, 1987, charges made pursuant to railroad car service agreements are also exempt.

(4)(a) Any air carrier required by the United States Department of Transportation to keep records according to said department's standard classification of accounting may elect, upon the conditions prescribed in subparagraph (c), to be subject to the tax imposed by this part on services and tangible personal property according to the provisions of this section.

(b) The basis of the tax shall be the ratio of Florida
of Chapter 214. The ratio shall be determined at the close
of the carrier's preceding fiscal year. The ratio shall be
applied each month to the carrier's total systemwide gross
purchases of tangible personal property and services
otherwise taxable in Florida.

(c) The election provided for in this subparagraph
shall not be allowed unless the purchaser makes a written
request, in a manner prescribed by the Department of
Revenue, to be taxed under the provisions of subparagraph
(6), and such person registers with the Department of
Revenue as a dealer and extends to his vendor at the time of
purchase, if required to do so, a certificate stating that
the item or items to be partially exempted are for the
exclusive use designated herein. Otherwise, all purchases
of taxable property and services purchased in this state
shall be subject to taxation.

(d) Any air carrier eligible for the election provided
in subparagraph (a) which does not so elect shall be subject
to the tax imposed in part on the purchase or use of
services and tangible personal property purchased or used in
this state, as well as other taxes imposed herein.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.

Law Implemented 212.08(8)(9) F.S.; Sections 1, 2 and 7,
Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-77  Auctioneers, Agents, Brokers and Factors.

Effective July 1, 1987, the charge made by an auctioneer, agent, broker or factor for performing or providing a service is taxable except as provided in 12-ER-87-11(12).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law implemented Sections 1 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-78 Real Property.

(1)(a) Every person who rents or leases any real property or who grants a license to use, occupy or enter upon any real property is exercising a taxable privilege unless such real property is:

(b) Effective July 1, 1986, any person who grants a license to use, occupy or enter upon real property is exercising a taxable privilege.

(c) "Real Property" means any interest in the surface of real property unless the property is:

1. Assessed as agricultural property under Section 193.461, F.S.
2. Used exclusively as dwelling units.
3. Property subject to tax on parking, docking or storage space under Section 212.03(6), F.S.
4. Effective July 1, 1986, a public or private street or right-of-way occupied or used by a utility.
5. Effective July 1, 1986, a public street or road which is used for transportation purposes.
6. Property used at an airport exclusively for the purpose of aircraft landing or aircraft taxiing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling aircraft.
7. Property used at a port authority as defined in s. 315.02(2), F.S., exclusively for the purpose of oceangoing vessels or tugs docking, or such vessels mooring on property used by a port authority for the purpose of loading or unloading passengers or cargo onto or from such vessels, or property used at a port authority for fueling such vessels.
8. Effective July 1, 1987, property used as an integral part of the performance of qualified motion picture production services as defined in s. 212.0592(18)(a).
9. Effective July 1, 1987, property leased, subleased, or rented to a person providing food and drink concessionaire services within the premises of an airport, a movie theater, a business operated under a permit issued pursuant to Chapter 550, F.S. (dog and horse racing), a business operated under a permit issued pursuant to Chapter 551, F.S. (Frontons), or any publicly owned arena, sports stadium, convention hall, or exhibition hall, auditorium, or recreational facility.

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

11. Recreational property or other common elements of a condominium that is subject to a lease between the developer or owner of the condominium complex and the condominium association, in its own right or as the agent of the owners of individual condominium units. This exemption applies only to the lease payments and any other use of these properties by either the owner, developer or the association shall be fully subject to tax under Chapter 212.

(b) The provisions of this subsection relating to the license to use, occupy or enter upon any real property are effective July 1, 1986.

(2) The tenant, licensee, or person actually occupying, using, or entitled to use any real property shall pay the tax to his immediate landlord or such other person granting the right to such tenant or licensee to occupy or use such property.

(3)(a) The tax shall be paid at the 5.5 percent by the tenant, lessee, or licensee on all
considerations due and payable for the privilege of use, occupancy, or the right to use or occupy any real property for any purpose. Ad valorem taxes paid by the tenant, lessee, or licensee to the landlord, lessor, or other person granting a license for use of any real property or to anyone else on behalf of the landlord or other person granting the right to occupy or use such real property are taxable, including transactions between affiliated entities.

(b) The license for use of any real property is taxable, notwithstanding the fact the license arrangement was entered into prior to July 1, 1986. Persons with license arrangements in effect prior to July 1, 1986, which provide for payment of the license fee to be made on or after July 1, 1986, could not have avoided tax by pre-paying, prior to July 1, 1986, those license fees provided by the licensee arrangement to be paid on or after July 1, 1986.

(4) Only one tax on rentals or license fees payable shall be collected and the tax shall not be pyramided by a succession of transactions. The amount of tax due the State of Florida shall not be decreased by a succession of transactions.

(5) Each place of business is required to be registered separately by the owner, landlord, agent or person receiving the rent or license fee, who is obligated to collect and remit the tax.

(6)(a) Where a tenant or person occupying, using, or entitled to use any real property which is subject to tax sublets or assigns and collects rentals or licensee fees on a taxable portion of the leased or licensed premises, such tenant, licensee, or other person shall be required to register as a dealer and collect and remit the tax on all such sub-rentals or assignments.

(b) Notwithstanding the provisions of paragraph (a), when space is subleased to a convention or industry trade
show in a convention hall, exhibition hall, or auditorium, whether public or privately owned, the sponsor who holds the prime lease is subject to tax on the prime lease and the sublease shall be exempt.

(7) When a tenant (lessee) or person occupying, using, or entitled to use any real property (licensee) sublets or assigns some portion of the leased or licensed property, he may take credit on a pro rata basis for the tax that he paid to his landlord or other such person on the space that he subleases or assigns. Proration shall be computed on square footage or some other basis acceptable to the Department of Revenue. For example, "A" leases 200 square feet of floor space for $400 and pays his landlord $20 rental tax. "A" subleases 100 square feet of the space to "B" for $300 and collects $15 which he remits to the State, less a credit of $10 for tax that he paid to his landlord on the space that he subleased to "B". (One half of $400 is $200 and 5 percent of this amount is $10.)

(8) If a tenant or licensee sublets or assigns his interest in all of the leased or licensed premises, or retains only an incidental portion of the entire premises, then such tenant or licensee may elect not to pay tax on the prime lease or license provided that such tenant or other person shall register as a dealer and collect and remit tax due on the sub-rentals or assignments and pays the tax due on the portion of the rental charges or license fees pertaining to any taxable space which he retains. If the tenant or licensee elects not to pay the tax to his landlord, or other person granting the right to occupy or use such real property, he should extend to his landlord or such other person a resale certificate.

(9)(a) When the owner of a business, or the operator of a business who is a lessee or licensee, provides floor space to any person, and in addition thereto and in connection therewith also provides certain services to such
person such as display, delivery, wrapping, packaging.
technique, credit, collection or accounting. The amount
charged by the lessee or licensee to such person constitutes
the lease or rental of or the license to use or occupy real
property, and where the charges for such services are not
separately stated in the agreement and on the invoices or
other billings, the total consideration paid under the
agreement is taxable. Where the charges for such services
are separately stated in the agreement and on the invoices
or other billings, only those charges for floor space are
taxable through June 30, 1987. When the operator of a
business is a lessee or licensee, he may take credit in
accordance with the provisions of subsection (7) of this
rule, for the tax paid on the floor space which he subleases
or assigns.

(b) Effective July 1, 1987, the total consideration for
performing or providing any service is taxable, unless the
service is specifically exempt, even if the fact the amount
of consideration charged for such services is separately
stated.

(10) When the operator of a business, who may be the
owner or prime lessee, provides space to an independent
operator or licensee and does not furnish the general
services enumerated in subsection (9) above, the operator
shall collect and remit tax on the total consideration paid
by the independent operator or licensee for the right of
such person to occupy or use such space.

(11) (a) When a tenant or licensee pays insurance for
his own protection, the premium is not regarded as rental or
a license fee consideration, even though the landlord or
other person granting the right to occupy or use such real
property is also protected by the coverage. However, any
portion of the premium which secures the protection of the
landlord or person granting the right to occupy or use such
real property and which is separately stated or itemized is
regarded as rental or license fee consideration and is
taxable.

(b) Prior to July 1, 1987, when a lessor or person
receiving the rent or payment in and by a rental or license
fee arrangement with the lessee or other person paying the
rental or license fee, purchases utilities from a utility
company and merely serves as a conduit or pass through
between the utility company who furnishes the utilities and
the lessee or other such person who consumes the utilities,
the reimbursement by the lessee or other such person does
not constitute a taxable consideration for the privilege of
use, occupancy, or the right to use or occupy real property
but is considered a service provided:

1. The utility charge is separately itemized on the
lessee's or licensee's bill and includes provision for sales
tax;

2. The cost of the utilities to the lessee or licensee
is directly proportional to its usage; and

3. The lessor or person receiving the rent or payment,
makes no profit on the utilities, rather the lessor is
merely reimbursed by the lessee or licensee for actual
utility consumption.

4. Effective July 1, 1987, such utility services are
taxable unless specifically exempt.

(12) When the rental or lease of an interest in real
property or a license to use or occupy any real property,
includes areas which are used for free parking the entire
consideration paid by the lessee or licensee to the lessor
or person receiving the rent or payment in and by a rental
or license fee arrangement is taxable.

(13) When a rental, lease, or license to use or occupy
real property involves multiple use of such real property
wherein a part of the real property is subject to tax, and a
part of the property is excluded from the tax, the Department
of Revenue shall determine from the lease or license and such
other information as may be available, that portion of the
total rental charge or license fee which is exempt from the
tax. When, in the judgement of the Department, the amount of
rent or license fee stated in the lease or license fee
arrangement for the taxable portion of the real property does
not represent true value, the Department shall make a
determination of the proper amount of rent or license fee
applicable thereto for the purpose of determining the amount
of tax due from such other information as is available.

(14) The charge made to its customer by a railroad for
the use of a side track located on railroad property is
taxable.

(15) Any person who has leased, occupied, or used or was
entitled to use any real property and cannot prove that the
tax has been paid to his lessor or other person shall be
directly liable to the state for any tax, interest, or
penalty due on any such taxable transaction.

(16)(a) Prior to July 1, 1987, when a lessee or
licensee is required under the terms of his lease or license
fee arrangement to make payments to a merchants association
or to the lessor or other person receiving the rent or
payment, in and by the rental or license fee arrangement, to
be transmitted without deduction therefrom to a merchants
association, such payments are not rent and shall be exempt.
"Merchants association" means a corporation not for profit
organized and existing for the sole and exclusive purpose of
promoting the businesses of a group of merchants.

(b) Effective July 1, 1987, such payments to a
merchant's association by a lessee or licensee shall be
taxable if the payments are a part of the consideration for
the right to use or occupy the real property. If the payments
are not part of the consideration for the right to use or
occupy the real property such payments are not taxable, see
12 ER-87-33.

(17) The lease or rental of land or a hall or other
facilities by a fair association subject to the provisions of Chapter 616, F.S., to a show promoter or prime operator of a carnival or midway attraction is exempt from tax. However, the sublease of land, hall or other facilities by the show promoter or prime operator of a carnival or midway attraction is taxable.

(18) Effective October 1, 1986, the lease of recreational property or the common elements of a condominium between the developer or owner thereof and the condominium association in its own right or as agent for the owners of individual condominium units or the owners of individual condominium units is not subject to tax. However, only the lease payments on such property shall be exempt from the tax, and any other use made by the owner or the condominium association is fully taxable.

(19)(a) The lease or rental of real property or a license fee arrangement to use or occupy real property between related corporations is subject to tax.

(b) The total consideration, whether direct or indirect, payments or credits, or other consideration in kind, furnished by one corporation is subject to tax despite the fact that one of the corporations may be a parent corporation and the other a wholly-owned subsidiary.

(c) The total consideration furnished by one corporation to a related corporation for the occupation of the real property or the use or entitlement to use of real property owned by the related corporation is subject to tax, even though the amount of the consideration is equal to the amount of the consideration legally necessary to amortize a debt owned by the related corporation and secured by the real property occupied, or used, and even though the consideration is ultimately used to pay that debt. However, such consideration is not rent but the payment of a debt if the corporation furnishing the consideration is as equally liable on the debt secured by the real property as the
related corporation. any amount furnished to the related
corporation over the amount legally necessary to amortize
that debt is subject to tax unless specifically exempted by
statute.

(20)(a) When tangible personal property is left upon
another's premises under a contract of bailment, the bailee
is not exercising a privilege taxable under the provisions
of s. 212.031, F.S., relating to leases, licenses, or
rentals of real property.

(b) A bailment is a contractual agreement, oral or
written, whereby a person (the bailor) delivers tangible
personal property to another (the bailee) and the bailor for
the duration of the relationship relinquishes his exclusive
possession, control, and dominion over the property, so that
the bailee can exclude, within the limits of the agreement,
the possession of the property to that of all others. If
there is no such delivery and relinquishment of exclusive
possession, and the owner's control and dominion over the
property is not dependent upon the cooperation of the person
on whose premises the property is left, and his access
thereto is in no wise subject to the latter's control, it
will generally be held that such person is a tenant, lessee,
or licensee of the space upon the premises where the
property is left.

1. Example: A safety deposit box in a bank or vault
is a bailment, not a lease or license, because the bank has
one key and the customer another and both are necessary to
gain access to the box.

2. Example: An airport locker is not a bailment, but
a lease or license, because the renter has the key and sole
access to the stored property.

c. A person who merely grants storage space without
assuming, expressly or implied, any duty or responsibility
with the respect to the care and control of the property
stored is a landlord of a person granted a right to occupy
or use such real property and is not a bailee. Thus, the
person granting the right to use such storage space is
exercising a privilege taxable under the provisions of s.
212.031, F.S., as a lease or license.

(d) A lease, license, or bailment is indicative of a
contractual relationship, and the terms are not mutually
exclusive. Whatever label is attached to a contract, in
determining whether a transaction is a bailment or a lease
or a license, consideration will be given to the manifested
intention of the parties as to which relationship has been
created.

(e) In the absence of an express contract, the creation
of a bailment requires that possession and control pass from
the bailor to the bailee; there must be full transfer,
actual or constructive, so as to exclude the property from
the possession of the owner and all other persons and give
the bailee sole custody and control for the time being.

(f) Effective July 1, 1987, a bailment is either
taxable or exempt depending upon whether the service of
which it is part is a taxable service.

Specific Authority 212.17(6), 212.18(2) FS; Section 33,
Chapter 87-6 Laws of Florida.

Law Implemented 212.02(6)(h), 212.031, 212.06(7)(j) FS;
Sections 7, 8 and 25, Chapter 87-6, Laws of Florida.

History - New 7 1 87.
Rentals of Tangible Personal Property.

(1) The lease, rental of railroad cars, and services related thereto, to a railroad company for use on its track is exempt, provided the rental charges are subject to jurisdiction of the United States Interstate Commerce Commission and are based on hourly, daily or mileage charges are exempt. Effective July 1, 1987, charges made pursuant to railroad car service agreements are also exempt.

(2) When the owner of equipment furnishes the operator and all operating supplies, and contracts for their use to perform certain work under his direction and according to his customer's specifications, and the customer does not take possession or have any direction or control over the physical operation, the contract constitutes a service transaction and not the rental of tangible personal property, and the charge is exempt through June 30, 1987, but is taxable beginning July 1, 1987.

(3) When a vessel is chartered with crew furnished, for the purpose of transportation from one point to another and the charterer does not have any direction or control over its operation, the contract constitutes a service transaction and not the rental of tangible personal property and is exempt through June 30, 1987, but taxable beginning July 1, 1987.

(4) When the owner of a vessel supplies the crew, which remains under the control and direction of the owner, and makes a charge measured on an admission or entrance or length of stay aboard the vessel for the privilege of participating in a sport or recreation, the charge is taxable as an admission. When such charge before July 1, 1987 is for the privilege of fishing, it is exempt, but such a charge on or after July 1, 1987 for the privilege of fishing is taxable.
(5) When the owner of a float contracts with a second party to furnish the driver and float in a parade for the benefit of the second party, the charge made is considered a charge for service and is exempt from tax through June 30, 1987, but effective July 1, 1987, such charge is taxable. The owner is liable for tax on the materials he uses in the construction of the float. If the owner of a float leases it to a second party and surrenders possession to such party, the rental charge is taxable.

(6)(a) A decorating contractor who uses materials and supplies such as bunting, streamers, colored paper, wreaths, pennants, lights, rope, etc., in fulfilling a contract which requires the furnishing of arrangements and decorations to, and their subsequent removal from, hotels, offices, public buildings, etc., is the consumer of such materials and supplies and shall pay tax on their acquisition. His charge under such contract is subject to tax.

(b) The charge a contractor makes to his customer for the rental of a flag kit containing a flag of the United States or the official state flag of Florida which may include flag poles, standards, etc., is exempt. The rental of any related accessories, when not rented as part of a kit containing a flag, is taxable.

(7) The revenue derived from coin operated lockers in hotels, depots, etc., is taxable.

(8) The charge made for the use of frozen food lockers in cold storage or locker plants under a bailment agreement is exempt, see 12 ER-87-11(4)(d)1, and 12 ER-87-78(20). The equipment used in these plants is taxable.

(9) The charge for water conditioning (soft water service) is exempt through June 30, 1987, effective July 1, 1987 such charge is taxable when provided to a business, see 12-ER-87-24. The dealer shall pay tax on the acquisition of tanks, minerals and other equipment used in furnishing such service and the service is subject to tax.
(10) Charges made by buses, taxicabs, etc., for
advertising space thereon are exempt through June 30, 1987,
but are taxable beginning July 1, 1987 as advertising.

Specific Authority 212.17(6), 212.18(2) FS.; Section 33.
Chapter 87-6 Laws of Florida.
Law implemented as amended by Sections 3, 7, 10 and 14.
Chapter 87-6, Laws of Florida, 213.12 FS.
History - New 7-1-87.
12-ER-87 80   Advertising Agencies.

(1) The professional service fee charged by an advertising agency before July 1, 1987, is exempt only if the transaction does not involve the sale of tangible personal property for which a charge is made. Such services performed on or after July 1, 1987, are taxable in any event. In instances where tangible personal property is involved, the advertising agency either sells tangible personal property, uses or consumes it in the performance of a service. Where sold, the sales price as defined by law is the taxable amount of the tangible taxable personal property. Where tangible personal property is used or consumed, cost price, as defined by law, is the taxable amount of the tangible personal property to the agency.

(2) When an advertising agency’s professional fee is paid in the form of a trade discount or by an addition to the agency’s cost, such fee is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 6 and 7, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-81 Direct Pay Authority.

(1) Effective June 30, 1987, the provision of Rule 12A-1.001(6), F.A.C., which authorizes certain dealers, who have obtained written consent from the Department, to self-accrue use tax on purchases or repairs and direct such tax directly to the department is repealed.

(2) Effective July 1, 1987, a dealer, registered under Part I of Chapter 212, F.S., who annually purchases at least $100,000 worth of taxable tangible personal property including maintenance and repairs for the dealer's own use and not for resale, may request in writing, that the department consent to and allow the dealer to assume the obligation of self-accruing use tax due on purchases of tangible personal property when the taxable status of such property will be known only upon its use because the dealer, by virtue of the normal characteristics of his trade or business, regularly consumes that type of property as a supply as well as sells the property.

(3) Effective July 1, 1987, a dealer, registered under Part I of Chapter 212, F.S., leasing real property subject to the tax imposed by s. 212.031, F.S., from a number of independent property owners who, apart from the lease of real property to such dealer, would not obligated to register as a dealer engaged in the business of leasing real property, may request written consent from the department to assume the obligation of self-accruing the tax.

(4) Effective July 1, 1987, a dealer registered under Part I of Chapter 212, F.S., who annually purchases at least $10 million dollars of taxable tangible personal property in any county for the dealer's own use and not for resale, may request in writing that the department consent to and allow the dealer to assume the obligation of self-accruing use tax due on purchases of tangible personal property.
(5) Upon receipt of a written request to self-accrue the use tax, the department may, in its discretion, issue a numbered Direct Payment Permit. The effective date of the Direct Payment Permit Number shall be the date the department approves the dealer's written request to self-accrue the tax.

(6) The written consent from the department allowing self-accrual of the tax is a revocable privilege, rather than a right, and such privilege may be cancelled at the initiative of the department or voluntarily terminated by the dealer. The cancellation of the privilege to self-accrue the use tax by the department is not appealable. The department will provide written notice of the cancellation of the privilege to self-accrue the tax to the dealer by registered mail. When a privilege to self-accrue the use tax is cancelled by the department or voluntarily terminated by the dealer, the dealer who formerly held the privilege must immediately notify each dealer to whom the self-accrual authority was extended that the authority is no longer valid.

(7) Any dealer who obtains written consent from the department to self-accrue the tax must maintain accounting records that clearly distinguish between taxable and non-taxable purchases or leases. The dealer must agree to accrue and pay all taxes imposed by Part I of Chapter 212, F.S., by the 20th day of the month following each monthly period in which the tangible personal property or real property becomes subject to tax by reason of the use or consumption of tangible personal property or the lease of real property in this state.

(8) The dealer obtaining written consent from the department to self-accrue tax must agree to give a resale certificate (as opposed to a direct payment exemption certificate) for any taxable item that will be resold when the taxable status is known at the time of purchase.
(8) All dealers who have obtained written consent from the department to self-accrue tax shall file with the department, each year, a report in the month of September. The report shall show the amount of total purchases by county for the period of September 1 through August 31, and the amount of use tax self-accrued on such purchases by county.

(9) A blanket direct payment exemption certificate such as described in this subsection must be given by the dealer, who has obtained written consent from the department to self-accrue tax, in lieu of paying the tax upon purchases of tangible personal property and leases of real property to their suppliers or lessors.

STATE OF FLORIDA
LIMITED SALES AND USE TAX
BLANKET DIRECT PAYMENT EXEMPTION CERTIFICATE

Direct Payment Permit Number ________________
Effective Date of Permit ________________

The undersigned hereby assumes the obligation of self accruing and remitting use tax upon its purchases of taxable tangible personal property or taxable leases of real property from ________________

(Name of seller or lessor)

This certificate shall remain in effect until the seller of tangible personal property or the lessor of real property is otherwise notified.

This certificate does not cover and must not be used for:

1. Purchases of taxable items of tangible personal property when the taxable status of such property is known by the purchaser at the time of purchase.

2. When the owner of the real property is obligated to be registered as a dealer engaged in the business of leasing real property to persons other than the
dealer extending the direct payment exemption
certificate.

2. Sales or rentals of any motor vehicle, aircraft,
boat or mobile home, tools, supplies, furniture,
fixtures, etc.

The permit holder agrees not to permit others (including
its contractors or repairmen) to use the undersigned's
direct payment permit number to purchase tangible personal
property or lease real property.

Name of Direct Payment Permit Holder:

Address:

Sales Tax No.:

Authorized Signature: ________________________________

(Owner or owner's representative)

Date certificate given to purchaser: ___________________

(10) See Rule 12-ER-87-56 (5), for information regarding
the procurement of self-accrual authority for services used
directly and exclusively for the maintaining, retrofitting,
repairing, or replacing of industrial machinery and
equipment.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 32,
Chapter 87-6 Laws of Florida.

Law implemented Section 32, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-82  Coin Operated Amusement Machines and Devices.

(1) When radio and television sets are placed on location by the owner under a contract whereby he receives a portion of the proceeds and the location operator receives a portion of the proceeds, total collections from such machines are subject to tax.

(2) Other coin operated amusement machines and device services are taxable. The tax shall be measured by the total collections from those machines, see 12-ER-87-30.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-83  Enterprise Zone Exemptions.

The exemptions on enterprise zone activities enumerated below which were scheduled to be sunsetted effective July 1, 1987, have been reinstated.

(1) Credit against jobs creation, see Rule 12A-1.099, F.A.C.;

(2) Electrical energy used in enterprise zones, see Rule 12A-1.102, F.A.C.;

(3) Building materials used in the rehabilitation of real property used in an enterprise zone, see Rule 12A 1.100, F.A.C.; and

(4) Business property used in an enterprise zone, see Rule 12A-1.101, F.A.C.

(5) The exemptions provided for in (3) and (4) hereof are limited only to building materials and business property. The construction service for the building materials and installation charges for the business property are fully taxable, see 12-ER-87-5 (combined transactions) and 12-ER-87-31 (construction services).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 37, Chapter 87-6 Laws of Florida.

Law Implemented Sections 2, 5 and 25, Chapter 87-6, Laws of Florida.

History - New 7 1-87.
Use Tax.

(1) A use tax is imposed on all services purchased in other states, territories, the District of Columbia or any foreign country and used in this state purchased in such a manner that sales tax would be applicable at the time of purchase.

(2) The provisions of the Florida Sales and Use Tax Law shall not apply to the use or consumption of services, upon which a like tax equal to or greater than the amount lawfully imposed has been paid in another state. If the amount of tax in another state is not equal to or greater than the amount of tax imposed by law then the dealer shall pay to the Department of Revenue the amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed in Chapter 212, F.S.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law implemented Sections 1, 7 and 12, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12-ER-87-85  Machinery and Equipment Used to Increase Productive Output.

(1) The exemption for machinery and equipment authorized pursuant to s. 212.08(5)(b), F.S., is expanded to include services directly related to the installation of such machinery and equipment, excluding construction services, see 12-ER 87-31.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 5, 14 and 59, Chapter 87-6, Laws of Florida.

History - New 7-1-87.
12 ER 87 86  Machinery Equipment or Services Used in Production of Electrical or Stream Energy.

(i) The exemption for machinery and equipment used in the productive of electrical or stream energy authorized pursuant to 212.08(5)(c), F.S., was expanded to include services directly related to the installation of such machinery and equipment, excluding construction services. See 12-ER-87-31.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law implemented Sections 5 and 14, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-87 Machinery, Equipment, or Services used under Federal Procurement Contract.

(1) The exemption for machinery and equipment used under Federal Procurement Contracts authorized pursuant to s. 212.08(5)(d), F.S., has been expanded to include services directly related to the insulation of such machinery and equipment, excluding construction services, see 12-ER-87-31.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 5 and 14, Chapter 87-6, Laws of Florida.
History - New 7-1-87.
12-ER-87-88 Partial Exemption: Flyable Aircraft.

(1) The partial exemption for flyable aircraft sold by
a manufacture of flyable aircraft authorized pursuant to s.
212.08(11), F.S., was reenacted. However, the provision
whereby the manufacture of flyable aircraft was allowed to
retain a 10 percent deduction of the amount of sales tax due
on such sales has been repealed, effective July 1, 1987.
(See Rule 12A 1.056, F.A.C. for dealer's collection
allowance.)

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.

Law Implemented Sections 14 and 17, Chapter 87-6, Laws of
Florida.

History - New 7-1-87.
12-ER-87-89  Sale of Food, Drink and Entertainment by
Restaurants and Other Eating Places; Gratuities.

(1) The charge made by a restaurant for preparing meat,
poultry and game furnished by the customer for consumption
elsewhere is exempt from taxation through June 30, 1987, but
is taxable after July 1, 1987.

(2) Any gratuity charge, made to a customer for the
service of any taxable food or drink product, is considered
part of the sales price of such food or drink product and
taxable unless:

(a) The charge is a voluntary gratuity or tip added to
or by the purchaser to his bill or money given freely by the
purchaser over and above the sales price of such food or
drink product; or

(b) Separately stated on the purchaser's bill or
invoice as a gratuity or tip; and

(c) All such voluntary gratuities must be distributed
in full to the employees at least every six months with no
part accruing to the benefit or advantage of the dealer.

(3) The fee charged (the cover charge, service charge
or any minimum charge) made by a restaurant, tavern, night
club or other like places of business is taxable.

(4) The room service charge made by hotels for serving
meals in guests' rooms is taxable.

(5) The total charge for corkage fees and setups,
including ice, waters, soda, soft drinks, etc., is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections 1 and 7, Chapter 87-6, Laws of
Florida.

History  New 7 1 87.