TRANSMITTAL MEMORANDUM
DEPARTMENT OF REVENUE
INFORMATION RELEASE
SALES AND USE TAX

PURPOSE: This transmittal memorandum contains information and instructions relating to Department of Revenue Information Releases which will be issued weekly for the purpose of implementing the sales and use tax on services. The positions reflected in the statements in this release are effective immediately and are to remain in effect until further notice.

Department of Revenue personnel are advised to use the statements on the issues addressed in information releases when advising taxpayers or responding to questions from the public. The public should be informed that verbal assistance, and any advice or response given in reply to a question or issue not specifically covered in an information release, is not binding on the Department and is merely the opinion of the employee on the issue.

The public may contact the Tallahassee office for assistance by calling (904) 488-6800, or 1-800-872-9909. A nonbinding written statement on the application of the new sales tax provisions may be obtained by submitting a written request detailing the transaction or situation to the Bureau of Tax Information and Assistance, P.O. Box 5139, Tallahassee, Florida 32314-5139. Binding statements may be obtained by submitting a written request in compliance with Emergency Rule 12AER87-91, F.A.C. The request must be submitted to the Department of Revenue, Office of the General Counsel, P.O. Box 6668, Tallahassee, Florida 32314-6668.

Contents:

Sales and Use Tax
New Statements 61-128*

Instructions: This information release and all subsequent releases are to be made available to all Department of Revenue employees involved in implementing the sales tax law changes and those employees who deal directly with the public. Additional information releases will be issued each Friday for as long as necessary. Employees should retain this transmittal memorandum and the attached materials. Subsequent releases will contain filing instructions and new or updated materials.

Filing Instructions:

Remove statements 48 & 49 dated 7/31 and replace with statements 48 & 49 dated 8/14.
Add new statements 61 to 128 to package.*

*Note: Only those statements which are numbered between 61 & 128 which have been approved for release are attached to this information release. As those statements which are not included are approved you will receive them as part of a future information release.
Transportation Services Trucking and Warehousing

Rule 12AER87-11(17)(A)l, F.A.C., provides that certain trucking services are exempt. This exemption extends to local and long distance trucking in specific categories. These categories include local hauling services provided without storage and over the road trucking services which are provided by a common carrier or which are provided under special or individual contracts.
Governmental Units

The sale of a service to a governmental entity is covered by s.212.08(6), F.S. as amended by Chapter 87-101, L.O.F., and Rule 12AER87-49, F.A.C. A sale of a service to a governmental entity is exempt from sales tax if it is made direct to the governmental entity and payment is made directly to the service provider by the governmental entity. The governmental entity desiring to qualify for the exemption must obtain from the Department of Revenue, a Consumer's Certificate of Exemption (DR-14). This exemption will not inure on sales to, and paid by, government employees by any means, including but not limited to, cash, check or credit card, when the employee is subsequently reimbursed by the governmental entity.
Registration

If you do not intend to sell, provide, or perform a service in the state, an application for Certificate of Registration is not required.
Refunds & Credit Unearned Commission

When a sale of a real estate service upon which the tax has been paid to the seller of the service by the purchaser of the service is cancelled, and all or any portion of the commission is refunded, the seller of the service shall also refund the tax paid. If the service provider credits any portion of the commission to the purchaser's account, a credit shall also be given the purchaser for tax previously paid. If the service provider refunds the tax, he may claim a refund or credit for such amount of tax on a subsequent return filed with this Department. Applications for refunds must be made in writing and submitted to the Department within 36 months from the date of payment to the state.
Transition Rule Real Estate Leasing & Management Fees

When a leasing or management service that is taxable beginning July 1, 1987 is provided prior to July 1, 1987, it is not subject to tax. If the service is provided on or after July 1, 1987, the service shall be taxed unless it was prepaid in full prior to April 1, 1987. When the service is provided for a period of time beginning prior to and ending after July 1, 1987, tax will be due upon the portion of the service provided on or after July 1, 1987.
Sales Tax on Services Remittance of Tax

The real estate service provider shall charge, collect, and remit the sales and use tax on services. If a service is used in Florida and the service provider fails to collect the tax, the purchaser of the service shall remit the tax for the use of the service. The tax shall be separately stated on any charge ticket, invoice, sales slip or any other tangible evidence of sale. In the case where an escrow agent, title company, bank or other third party closing agent is the person or entity disbursing the compensation for the real estate service, the real estate service provider is to collect the tax from such third party closing agent and remit the tax to the state, along with the real estate service provider's designated tax return form. Third party closing agents generally have no responsibility to charge, collect, or remit the tax.
Sale Tax on Services Remittance of Tax
Real Estate Commission

The sales and use tax is in addition to the total amount of the consideration for services and shall be separately stated as Florida tax on any charge ticket, invoice, sales slip or other tangible evidence of sale. Settlement or closing statements used to report the proceeds of the transaction are not necessarily evidence of the sale of the real estate services.
Real Estate Commission Exemption

Real estate commissions charged for the sale of property assessed as homestead property are exempt from sales or use tax when all of the following conditions are met:

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

2. The property seller affirms, by notarized affidavit given to the agent or broker who is 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 homestead property.

3. The registered real estate dealer shall retain a copy of the affidavit to support each exemption.
Real Estate Housing & Business Brokerage Service

Effective July 1, 1987, Chapter 87-6, L.O.P., require that the sale at retail of any service in this state be taxed at the rate of 5% of the sales price of the service. Compensation for services relating to sales, leases, licenses, and other transactions concerned with real estate, housing and business brokerage are taxable services. These services include, but are not limited to:

Services of a broker as defined in Chapter 475, F.S.;

Services of a managing entity managing commercial and residential real property;

Services of marketers and marketing consultants as they relate to real property;

Services of receivers, even when court appointed;

Services of escrow agents;

Services of surveyors;

Services of investment advisors, who advises on investment in real estate;

Title services.
Fee sharing or "fee splitting" for services described in Chapter 475, Florida Statutes, titled Real Estate Brokers, Salesmen, and Schools, by persons licensed under Chapter 475, is not considered a "retail sale," "sale at retail," "use," "storage; or "consumption" of real estate services and is, therefore, exempt from the sales tax on services.
Sales of real estate appraisal services made directly to the United States Government, a state, or any county, municipality or political subdivision of a state are exempt. However, such governmental entities desiring to qualify for the exemption must obtain a Consumer's Certificate of Exemption from the Florida Department of Revenue. This exemption will be strictly defined, limited and applied to each entity requesting such exemption.
Record Retention Period

Section 212.13(2), F.S., as amended by Chapter 87-6, L.O.F., provides that each dealer shall secure and maintain, for a period of three years, all pertinent records and papers as may be required by the department for the reasonable administration of Chapter 212, F.S. For administration, purposes, the Department requires each dealer to secure and maintain those records and papers which would establish an easily verifiable audit trail.
Construction Contract-Exempt

Construction services performed prior July 1, 1987, pursuant to a contract entered into on or after May 1, 1987, are not subject to sales tax, provided the construction services can be separately stated and identified from the construction service provided on or after July 1, 1987.
Construction; Contract Price

Contracts which call for the maintenance or repair of real property are taxable as construction contracts pursuant to the definition of contract price found in Rule 12AER87-31(7)(i)l., F.A.C. The method by which the prime contractor arrives at the total amount of tax due depends on whether or not the contract is for an amount greater than, or less than, $5,000.00.
Employee Leasing Service

Subsection 212.0592(41), F.S., provides a partial exemption for employee leasing services enumerated in SIC Group 7369. The exemption applies only 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 which exceeds payroll and related employment benefits paid or provided to the leased employees is taxable. Employment agencies, temporary help supply services, and establishments primarily providing one specialized service are not included in SIC Group 7369 and are not eligible for this partial exemption.
Rental of Tangible Personal Property

Rule 12A-1.071(6), F.A.C., provides that each rental payment under a lease purchase or similar agreement covering tangible personal property is taxable. When title to the property passes to the lessee-purchaser, no tax is due on that part of the purchase price upon which rental tax has been paid. Only the balance of the purchase price is taxable.
Rental of Real Property

Rule 12A-1.070(8), F.A.C., provides that if a tenant sublets or assigns his interest in all of the leased premises, or retains only an incidental portion of the entire premises, the tenant may elect not to pay tax on the prime lease, provided the tenant registers as a dealer, collects and remits tax due on the sub-rentals, and pays the tax due on the portion of the rental charges pertaining to any taxable space which is retained by the tenant. If the tenant elects not to pay the tax to the landlord, the tenant should extend a resale certificate to the landlord.
Rental of Tangible Personal Property

When tangible personal property is subleased to an end user or sublessee, the sales tax is to be paid by the end user or consumer which is the sublessee as provided in Rule 12A-1.071, F.A.C.
Sale For Resale

Any person who has purchased tangible personal property for use in Florida and cannot prove that the tax levied by s. 212, F.S., has been paid to his vendor is shall be directly liable to the state for any tax, interest, or penalty due on any such taxable transactions, as provided in Rule 12A-1.091(13), F.A.C.
Refunds & Credits

In accordance with Rule 12A-1.014(7), F.A.C., a taxpayer entitled to a refund of taxes paid in error, must secure such refund from the dealer and not direct from the department. The dealer, in turn, will obtain a refund or credit from the department.
Tangible Personal Property

Rule 12A-1.037(12)(b), F.A.C., provides that the sale of gold and silver bullion by a dealer is deemed to be a sale of tangible personal property and is subject to sales tax.
Tangible Personal Property

Rule 12A-1.037(12)(c), F.A.C., provides that the sale of coins of the realm by a dealer is deemed to be a sale of money (legal tender) and is not subject to sales tax.
Tangible Personal Property Deliver of

Rule 12A-1.064(23)(a), F.A.C., provides that deliveries of tangible personal property made in Florida to nonresident dealers who do not hold a Florida certificate of registration are taxable, unless the nonresident dealer furnishes the seller a statement that the tangible personal property will be transported outside of Florida by the dealer for resale and for no other purpose.
The sales and use tax on services shall be due and payable at the time the service has been performed. For the purposes of real estate sales commissions, the service is considered to have been performed on the date on which the contract to sell the property was executed. The real estate service provider may elect to ascertain the amount of tax payable on the basis of cash receipts on all taxable service transactions. This election then becomes applicable to all taxable transactions and is available only to businesses which are primarily service providers.
The charge for services as personal representative for estates of decedents are taxable services when provided by financial institutions. In the case where personal representative fees arise from the occasional or isolated sale of such services, these fees are not taxable consideration for the purpose of Florida sales tax. In the case where consideration of this nature is paid to persons providing these services as professional services, the charge for such services is taxable.
Accounting services performed by an employee for the benefit of an employer are exempt from Florida sales and use tax. This exemption does not apply to an employee acting in the capacity of an independent contractor for the benefit of his employer.
Sale For Resale Accounting Services

A sale of accounting services shall be considered a sale for resale only if the following conditions are met:

(1). The purchaser of the accounting service does not consume the service, but acts as a broker procuring the service for his client or customer;

(2). The purchaser of the accounting service has a written contract with the seller of the service identifying the ultimate purchaser of the service;

(3). The purchaser of the accounting service separately states the purchase price of the service on subsequent resale of the service;

(4). The value of the accounting service will be taxed in a subsequent sale unless the sale of the accounting service is exempt as a sale of service for use outside of this state or is a sale of the service to an exempt service purchaser.
Occasional and Isolated Sales Accounting Services

The tax on the sale or use of services does not apply to the occasional or isolated sale of service by a person who does not hold himself out as engaged in business, or the use of services purchased in a transaction that is an isolated sale.
Services sold outside of this state for use outside of this state are generally exempt from Florida sales and use tax so long as the purchaser of the service has no tax nexus in this state and the benefit of the service is enjoyed outside this state. To claim this exemption, the purchaser of the service must obtain an Exempt Service Purchaser Permit for Out of State Business or Persons, or execute a notarized Exempt Service Purchase Affidavit and provide this affidavit to the seller of the service at the time of sale.