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 both inside 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 customerially 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.

(c) In no event shall a cost be attributed to a location where the service provider is not itself doing business as evidenced by a place of business, property, employees or representatives that are agents or independent contractors, or inventory.

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 9, Chapter 87-101, Laws of Florida 87

History - New 7-1-87, Amended 9-03-87.
Regarding Use or Consumption.

(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 user or purchaser of the service has tax nexus with Florida.

(b)(1) The use tax shall be collected and remitted by the seller if the seller has a tax nexus with Florida and the service either:

at. The service directly relates to real property in Florida; or

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

c. The service is represented by tangible personal property which is forwarded to a natural or non-natural person in this state within the meaning of s. 212.02(17), as amended by Chapter 87-4, L.O.F., and the purchaser is not a multi-state business holding a Valid Exempt Service Purchase Permit for Out-of-State Businesses or Persons (DR-14P).

2. Services directly relate to real property if:

a. The service touches and concerns the real property;

b. The service benefits the property irrespective of ownership;

c. The service is rendered in connection with the development, improvement, acquisition or disposition of real property or the financing of development, improvement, acquisition or disposition of real property; or

d. The service is rendered in connection with processing, originating, maintaining, servicing.
terminating, or foreclosing a lease entered by real property. (c) Notwithstanding the provisions of paragraph (b), a multistate seller is not required to collect the use tax if the purchaser is a multistate entity that presents a valid Certificate of Registration (Form DR-11T) incorporating an exempt purchase permit for multistate businesses; and the seller retains a copy of such permit.

(d) 1. For purposes of this subparagraph "tangible personal property" shall have the meaning set forth in the first sentence of s. 212.02(26) as amended in s. 7) Chapter 87-6, L.O.F. However, tangible personal property is not taxable as such if the tangible personal property represents a service and is an inconsequential element of the transaction. Such "nontaxable" tangible personal property includes, but is not limited to, a will or trust document, architectural plans, a consulting report, a tax return, or a written analysis prepared by an investment advisor or other professional.

2. To represent a service, tangible personal property must be the product of, or embody the result of, the service. An invoice, statement, bill of sale or other tangible evidence of the sale does not qualify as tangible personal property representing the service.

(2) For purposes of determining where the benefit of a service is enjoyed the following rules shall apply:

(a) 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 paragraph (j)), is not interstate or international transportation (See Rule 12AER87-34(7)) or interstate advertising (See Rule 12AER87-44), the benefit of the service shall be presumed to be enjoyed the following shall apply:

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1. Where specific real property is located, if the service directly relates to or benefits specific real property (See (1)(b)(2) of this rule for determining when services directly relate to real property), the benefit of the service shall be presumed to be enjoyed where the real property is located; or

2. If the service is not directly related to specific 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 neither not directly related to real property, nor is not represented by tangible personal property received by the purchaser, the benefit of the service shall be presumed to be enjoyed 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 to be used or consumed outside this state. In determining whether the benefit of a service is enjoyed in this state the Department shall consider all of the facts and circumstances surrounding the transaction and 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 benefit of the service shall be presumed to be enjoyed following shall apply:

1. Where specific real property is located; if the service directly relates to specific benefits specific real
property (See (1)(2) at the rule for determining when
services directly relate to real property), the benefit of
the service shall be presumed to be enjoyed where the real
property is located; or

2. If the service is not directly related to
specific real property, where the business situs of specific
tangible personal property is located if the service
directly relates to specific tangible personal property and
such tangible personal property directly relates to and
benefits specific tangible personal property, the benefit of
the service shall be presumed to be enjoyed where the
property has acquired a business situs if the property has
acquired such situs; or

3. If the service directly relates to neither
real property nor specific tangible personal property with a
business situs, and the service directly involves sales to a
local market of the purchaser or user of the service, the
benefit of the service shall be presumed to be enjoyed where
the local market of the purchaser's or user local market
exists, subject to the provisions of paragraph (c) hereini;
or

4. If subparagraphs 1., 2., and 3. of this
paragraph are not applicable, and the purchaser or user of
the service, or any included member of the affiliated group
of which the purchaser or user is a member, is doing
business in this state and outside of this state Florida,
the service shall be presumed to be enjoyed in Florida to
the extent that the purchaser or user is doing business in
Florida. In the case of an affiliated group, the affiliated
group shall be considered the purchaser or user for purposes
of this subsection. For purposes of determining the extent
to which the purchaser or user is doing business in this
state, an apportionment formula shall be utilized, as
A service shall be deemed to be directly incident or relative to the service, exclusively related to or primarily benefiting activities of the service purchaser at a single specific business location or at multiple specific business locations within a distinct and limited local geographic area such as a county or Standard Metropolitan Statistical Area.

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 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, the service shall be deemed to be used or consumed outside Florida. In determining whether the benefit of a service is enjoyed in this state the Department shall consider all of the facts and circumstances surrounding the transaction and 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), F.S.

(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,

(1) A service shall be deemed to directly involve sales to a local market if the service exclusively relates to and primarily benefits activities of the service purchaser at a single specific business location, or at multiple specific business locations within a single state.

(a) The following services are presumed to neither directly relate to real property or tangible personal property having a business situs nor directly involve sales to a local market ("Presumptively Aportionable Services"): 1.

1. Accounting, Auditing and Bookkeeping Services described in S.I.C. 893 except such services exclusively related to taxes of state or local governments;

2. Banking Services and services of Credit Agencies other than Banks described respectively in S.I.C. 60 and S.I.C. 61;

3. Creative Services defined in 12A-1.072, F.A.C.;

4. Computer and Data Processing Services described in S.I.C. 737;

5. Holding and Other Investment Office Services described in S.I.C. 67;

6. Legal Services described in S.I.C. 81, except such services exclusively related to taxes of a state or local government;

7. Management, Consulting, and Public relations Services, including Lobbying Services, described in S.I.C. 7392, other than state and local government lobbying;

8. Research and Development Services and Testing Laboratory Services described respectively in S.I.C. 7391 and S.I.C. 7397; and

(1) If all equipment and occupational services are
authorized by a multistate purchaser, the characterization
of occupational and auxiliary services reported by such
purchaser shall be respected by the Department.

(2) Upon the prior written consent of the Department,
all services may be authorized by a multistate purchaser,
in accordance with s. 212.0571(7)(b)4., F.S., as amended, if
the purchaser satisfies all of the conditions described in
this subsection (f).

1. Each request by a multistate purchaser for the
prior written consent of the Department shall be in writing;
shall be sworn to by a corporate officer or, if the
purchaser is not a corporation, such other person having
legal authority to bind the purchaser, and shall expressly
represent that:

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a. the value of allocable services used by the
purchaser in substantially the same manner as the value of
each service used by the purchaser and that failing to
allocate allocable services will not defraud or otherwise
tail to accurately reflect the value of services used by the
purchaser in this state or
b. the purchaser wishes to apportion all services used
by the purchaser for administrative ease and the purchaser
has no tax avoidance motive for apportioning such services.

2. Each multistate purchaser requesting the prior
written consent of the Department to apportion all of its
services shall demonstrate to the satisfaction of the
Department that:
a. apportioning all of its services accurately
reflects the value of services used in this state; and
b. No tax avoidance will occur as a result of
apportioning all of the services purchased by the
purchaser.

3. If the purchaser is an affiliated group, within the
meaning of ss. 212.02(2) and 212.0591(9)(b)4., F.S., as
amended: all of the services purchased by the purchaser may
be apportioned if all of the members of the affiliated group
having Florida nexus obtain the prior written consent of the
Department and also satisfy the conditions imposed by this
subsection.

4. Upon the prior written consent of the Department: a
business comprised of members of an affiliated group having
related business activities and members having Florida nexus
but no related business activity, may exclude any member or
members that have Florida nexus but no related business
activity and define the remaining members of the group as
the purchaser for purposes of s. 212.0592(5) and s.
212.0591(9)(b)4., F.S., if all of the members of such a
and having nexus with this state, for any lawful purpose;
including the purpose of determining the accuracy of
representations of the purchaser contained in its request
for prior written consent from the Department.

(j)1.a. The apportionment fraction measuring the extent
to which a purchaser or user is doing business in Florida is
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 sales property and payroll factors shall be in
accordance with ss. 214.74, 214.72, 214.73; F.S. as;
modified by ss. 220.15 and 220.131(b), F.S. The provisions
of P.L. 96-272 shall not apply for the purpose of this
paragraph, nor apply in any other respect to taxes other
than those levied in Chapter 220, F.S. The calculation of
the apportionment fraction for an included member of an
affiliated group shall include in its denominator the
property, payroll, and sales of all members of the
affiliated group as defined in s. 212.02(2), F.S., excluding
those of the members which a taxpayer has actually elected

to exclude from the group pursuant to s. 121.21(12), F.S.,
and Rule 12AER97-15, F.A.C. See Rule 12AER97-9(e), F.A.C.,
for additional provisions and information on affiliated

groups. The apportionment fraction applied to transactions
occurring during the purchaser's or lessee'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 for filing a Florida or federal income tax return
for the current year, the taxpayer shall file a

Supplementary Sales and Use Tax Return for Multistate
Businesses (DR-15S), dated July, 1977, which is hereby
incorporated in this rule and made part of this rule by
reference. The Supplementary Sales and Use Tax Return for
Multistate Businesses (DR-15S) 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
calculations resulting from the rates shown on the original tax returns; the taxpayer shall omit the difference. If the calculations resulting from the rates shown on the original tax returns are lower, 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 B 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 were as follows:

\[
\begin{align*}
\text{(Florida)} & \quad \$25,000,000 \times 0.50 = 12,500,000 \\
\text{Sales:} & \\
\text{(Everywhere)} & \quad \$65,000,000 \\
\text{(Florida)} & \quad \$600,000 \times 0.25 = 150,000 \\
\text{Payroll:} & \\
\text{(Everywhere)} & \quad \$1,200,000 \\
\text{(Florida)} & \quad \$3,500,000 \times 0.25 = 875,000 \\
\text{Property:} & \\
\text{(Everywhere)} & \quad \$10,000,000 \\
\text{Total Apportionment Fraction:} & \quad 0.379808
\end{align*}
\]
The apportionment tax base is:
$7,779.49

Florida use tax payment is:
$165.47

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

d. 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 factors are unknown, an estimate will be acceptable for the period for which the apportionment factors remain unknown. The estimate shall be based upon a reasonable calculation utilizing sales, property, and payroll (except insurance or transportation 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.

(k) Interstate and international transportation services shall be presumed to be enjoyed in this state to the extent provided in s. 212.059(5), F.S.
(n) 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. 190.015, F.S. (1985).

(n) Example: Manufacturer's Representatives:

1. If a Florida-based broker represents a manufacturer wholly doing business in Florida, it is the responsibility of the broker to collect the full 5 percent tax on his commissions.

2. If the broker represents a multistate manufacturer who is doing business in Florida, the service he provides is partially taxable because it is deemed used in Florida to the extent the manufacturer is doing business in Florida. The method for measuring the manufacturer's business activity in Florida, and therefore the extent of sales tax liability for services purchased in Florida, is based upon the manufacturer's Florida corporate income tax apportionment fraction. An exception arises if the agent's territory is limited to a single state. If the state is Florida, then the manufacturer pays a tax on the full commission.

3. In recognition of the fact that the seller of a service generally cannot know what portion of his services are used in Florida and therefore taxable under this formula, the law shifts responsibility for remitting the tax from the service seller (the agent or representative) to the buyer (manufacturer). Multistate businesses that do business in Florida are required to register with the state.
Section 8D.3.7.7.1 of the manufacturer's exempt purchase permit number.

4. However, if a multistate manufacturer does not
obtain or refuses to present an exempt purchase permit, the
manufacturer's representative is required to collect the
full 5 percent tax on his services.

(3)(c) Nexus for sales and use tax purposes is
established by making sales or soliciting sales in this
state of either tangible personal property or services
whether such activities are performed directly or through
subsidiaries or independent contractors acting as agents,
even though the federal prosection of P.L. 86-272 may
exclude such activities from the definition of nexus for
corporate income tax purposes. Nexus within the state for
sales and use tax purposes exists in a variety of facts and
circumstances including but not limited to the following
activities which are described more fully in s. 212.06:
F.S.:

1. Selling, providing, performing, purchasing, using,
or consuming a service taxable under Chapter 212, F.S.;

2. Receiving orders from consumers for tangible
personal property or services for use, consumption, or
distribution in this state or storage for use or consumption
in this state whenever such orders are received as a result
of soliciting business by direct representatives, indirect
representatives, manufacturers' agents, or by distribution
of catalogs or other advertising matter, or by any other
means whatsoever;

3. Maintaining an office, distributing house, sales
room, warehouse, or other place of business in this state
5. Manufacturing or producing tangible personal property, or importing, or causing to be imported, tangible personal property from any state or foreign country when such act is for sale at retail for use, consumption, or distribution, or for storage for use or consumption in this state.

6. Leasing, renting or licensing tangible personal property for use or possession in this state; and

7. Leasing or granting a license to use, occupy, or enter upon, living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, real property, space or spaces in parking lots or garages for motor vehicles, docking or storage spaces for boats in boat docks or marinas, or tie down or storage spaces for aircraft at airports in this state.

(b) For purposes of the sales and use tax imposed under Chapter 212, F.S., the definition of ‘nexus’ contained herein and the definition of ‘dealer’ in § 212.06, F.S., shall be applied in a manner that does not create nexus solely as a result of occasional and isolated activities and in a manner that is consistent with applicable judicial decisions including: Scripco, Inc. v. Ceroni, 362 U.S. 207; National

Belles Hess, Inc. v. Department of Revenue, 396 U.S. 753

(1967); Readers Digest Association v. Mahin, 255 N.E. 2d.
Society v. State Board at Equalization; 430 U.S.

Jones (1977); and Tyler Pipe Industries, Inc. v. Washington

Department of Revenue; 55 USW 4979 (June 23, 1987).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,

Chester 87-6 Laws of Florida.

Law Implemented Sections 1 and 2, Chapter 87-6, Laws of

Florida; Sections 1 and 3, Chapter 87-72, Laws of Florida;

Sections 1, 2, 3, and 4, Chapter 87-101, Laws of Florida

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 resold service is purchased 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), F.S., as a sale of a service in this state for use outside this state; and

(e) The service is purchased pursuant to a Certificate of Registration (DR-11T), dated July, 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: Private detective 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 services in the performance of the law firm’s duties to its client.

Example #2: Spotless Cleaners is asked to remove a spot on a suede coat. It has no equipment to clean suede so it
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 search. 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) Certificate of Registration (DR-11T) shall be issued by the Department to any person who is primarily engaged in the business of selling services upon such person’s 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 12AER87-6). In the case of a business primarily operating as a service provider, the Certificate of Registration shall also serve as authorization to issue service resale certificates. 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 Certificate of Registration (DR-11T). The effective date of the Certificate of Registration (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 Certificate of Registration (DR-11T). Every dealer, who is primarily
engaged in the business of selling services, shall notify the
Department of Business Regulation (DBR) every five (5) weeks
from the effective date of such registration. 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 section 9 of CS/HS 1506 and the
statement shall include the following information:
1. The name of the person selling the service;
2. The purchaser's Certificate of Registration
Number;
3. The effective and expiration dates of the
purchaser's Certificate of Registration;
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 blanket service resale
certificate 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
This is to certify that certain services described above and purchased from [name of selling dealer] are to be purchased exclusively for resale pursuant to § 212.02(19), F.S., as amended by section 7 of Chapter 87-61, Laws of Florida and Section 9, Laws of Florida, of 1988. The invoice or contract for each service purchased tax free for resale will identify the party to which the service is resold.

Date of Issuance of Resale Certificate Purchased

Description of service purchased ____________________________

Sales price of the service purchased _________________________

Purchaser's Name ____________________________

Purchaser's Address ____________________________

Purchaser's Certificate of Registration Number ____________________________

Expiration Date of Purchaser's Certificate of Registration ____________________________

Effective Date of Purchaser's Certificate of Registration ____________________________

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 blanket 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
shall also be liable for fine and costs assessed in law for conviction of a misdemeanor of the second degree as provided in s. 775.087, s. 775.089, or s. 775.086, 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.

(5) 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 when said 475.011(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.

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, Sections 3 and 9, Chapter 87-101, Laws of Florida 1986.

History - New 7-1-87, Amended 9-03-87.
Remittance of Taxi Penalties; Interest;

Estimated Taxes; Quarterly Filing.

(1) The service provider shall charge, collect and remit the sales tax on services, and shall charge, collect and remit the use tax as provided in Rule 12AER87-7(1)(b).

If a service is used in Florida and the service provider fails to collect and remit the tax, the purchaser or user of the service shall remit the use tax on services.

(2)(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
(a) Services of partners in partnerships. Services that persons who are either natural persons or professional corporations ("qualified partners") render exclusively to their partnerships are exempt from tax on services pursuant to § 212.0592(4), F.S., unless a qualified partner renders such services to the partnership in the capacity of an independent contractor. Otherwise taxable services are not exempt by § 212.0592(4), F.S., if such services are rendered exclusively to a partnership by a corporate partner that is either a corporation within the meaning of Subchapter C or S of the Internal Revenue Code of 1986 and regulations thereunder (respectively, "C corporations" and "S corporations") or a trust, general partnership, limited partnership, or limited liability company. Neither a joint venture, tenancy in common, nor joint tenancy is a qualified partner for purposes of the exemption in § 212.0592(4), F.S., if such a venture, tenancy in common or joint tenancy is registered in accordance with § 865.09, F.S., as a partnership doing business under a fictitious name, or filed in accordance with Part I of Chapter 620 as a limited partnership, rather than being operated in the proper name of the owners of the venture property or the proper name of the joint owners.

2. Payments which are made by a partnership for services rendered by a qualified partner in his or her capacity as an employee are exempt unless the qualified partner also provides services in his or her capacity as an independent contractor and the services provided in each separate capacity are not separately stated pursuant to § 212.0591(7), F.S. Services provided by a partner that is not a qualified partner are not exempt under § 212.0592(4).
F.S. 4. Although such services may be exempt under other regulations of s. 212.059(7), F.S., services rendered by other professionals of s. 212.059(7), F.S., that are provided to the partnership, either by a partner that is not a qualified partner or by a qualified partner in his or her capacity as an independent contractor must be separately stated from other services provided by such partners in order to retain their tax exempt characteristics as provided in s. 212.0591(7), F.S. The sales price of services includes the total consideration paid for services, whether the payment is made in money or otherwise pursuant to s. 212.02(21), F.S.

Accordingly, payments for both taxable and exempt services must be separately and accurately stated.

That is not a professional corporation are not exempt whether or not such services are rendered by the corporate partner as an independent contractor.

(b) Professional Corporation, Partnership, and Limited Liability Company Defined. A professional corporation is a corporation properly incorporated in accordance with Chapter 621, F.S., or a similar statute of another state, and the professional corporation is in good standing in the state of incorporation. A partnership is any entity defined in and properly organized in accordance with the provisions of Chapter 620, F.S., other than:

1. Any entity that qualifies as a general partnership for federal tax purposes but for purposes of the exemption in s. 212.059(4), F.S., it is operated in the proper name of the owners of the business assets rather than being registered in accordance with s. 865.09, F.S., as a partnership doing business under a fictitious name.

2. Limited liability companies organized under Chapter 609, F.S.;

3. Cost sharing arrangements not engaged in for
profit for federal income tax purposes; and,

4. Individually, and other entities such as joint
ventures or joint tenancies, which are engaging in
activities under the proper or known called names of the
owners.

(c) Combined Transactions: Capacity of Independent
Contractor, and Separate Statement. Payments by a
partnership to a qualified partner for otherwise exempt
services must be separately stated in accordance with s.
212.0591(7), F.S., if such a partner is also providing services
that are taxable because the latter services are provided by
the partner in his or her capacity as an independent
contractor. In addition, payments for both taxable services
and services otherwise exempt by s. 212.0592(1) through (3)
and (6) through (51), F.S., which are provided by a
qualified partner in his or her capacity as an independent
contractor must separately state the exempt and taxable
portion of such services or the entire amount of the
payments for services will be taxable pursuant to s.
212.0591(7), F.S. Services provided by a qualified partner
that are not provided in his or her capacity as an employee
or that are not provided exclusively to one partnership, are
deemed to be rendered in the capacity of an independent
contractor. For purposes of determining if services are
provided in the capacity of an independent contractor, the
Department may consider whether services are not provided in
the capacity of a partner within the meaning of s. 707, of
the Internal Revenue Code of 1986, and the regulations
thereunder. Payments for both exempt and taxable services
must be separately stated and the exempt and taxable
portions clearly distinguished to the satisfaction of the
Department.
(d) **Total Consideration and Appraised Value.** The separate statement requirement for exempt services requires a written statement of the sales or cost price of services that accurately reflects the total consideration for such services because the sales or cost price of services includes the total consideration for such services paid in money or otherwise within the meaning of s. 212.02(21), F.S. Failure to separately state the sales or cost price for exempt and taxable services in an amount equal to the total consideration paid for each type of service fails to satisfy the separate statement requirement in s. 212.059(7), F.S., because the stated amount is not the sales or cost price within the meaning of s. 212.02(21), F.S. In cases in which the sales or cost price is not stated because the stated amount is less than the total consideration, the entire amount of consideration paid for services may be taxable because the sales or cost price for exempt services is not separately stated within the meaning of s. 212.02(21), F.S.

(e) **Amount and Form of Payment.**

1. **Total consideration is the stated amount if the stated amount is not less than the fair market value of the services at issue.** If the stated amount is less than the fair market of such services, total consideration is determined by the stated price plus other payments by the partnership. Where the stated price is less than the fair market value of services, the total consideration for such services is determined based on all of the facts and circumstances surrounding the service transaction. Partnership allocations and distributions may be treated as payments made in the form of money or otherwise, within the meaning of s. 212.02(21), F.S., whether such allocations or distributions are of property; a partnership interest in
property, taxable income, cash flows, activities, or otherwise.
Such payments by a partnership may be considered to be part
of the sales price for services provided by a partner to the
extent that such payments are made in a manner that is not
in accordance with the partnership interest of the service
provider and the service provider has failed to separately
and adequately state payments for services. Payments by a
partnership of money or property that are made to a partner
are not in accordance with the partnership interest of a
partner if such payments do not have substantial economic
effect within the meaning of § 704(b) of the Internal
Revenue Code of 1986 and the regulations thereunder.
Notwithstanding the fact that an allocation of the
distributive share of taxable income or other property is
made in accordance with the partnership interest of a
partner, such allocations may be considered to be payments
for services provided by a partner; whether or not such
allocations are actually distributed, if the partner to whom
such allocations are made has either a zero capital account
or a capital account balance that is established wholly or
partially by amounts not attributable to property or money.
Debt relief in excess of the adjusted basis in property
contributed by a partner may be treated as a payment by the
partnership to the extent that such payment exceeds the
adjusted basis of the property contributed. Similarly, debt
relief received by partners in excess of the adjusted bases
of their respective partnership interests, as a result of
financing of partnership debt; partnership reorganization or
recapitalization; or the admission of new partners, may be
considered a payment for purposes of Chapter 212, P.L.

2. Payments by a partnership may be made in the form
of contributions of money or property, or both, the fair
market value of which is not equal to the value of the
interest in the partnership received by the contributing partner. A partner who receives a percentage interest in a partnership in an amount less than the percentage of money and other property contributed by such partner, for example, may be considered to have purchased services from the other partners to the extent of the fair market value of any services rendered by the other partners to the partnership. The fair market value of the sales or cost price of services provided by a partner is determined on the basis of all of the facts and circumstances surrounding the transaction, including but not limited to, the value of the excess of the percentage of capital or other property contributed by a partner over his or her percentage interest in the partnership. If the value of such excess is less than the fair market value of such services, the tax due at the time of the transaction is not limited to that based on such excess. To the extent that the tax due is not paid by the person responsible for remittance of such tax, or to the extent that future services are provided by the same partner, future appreciation in partnership property may be used as a basis to measure the amount paid for such services.

(f) Examples:

1. 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 are not 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 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

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provided by Brown to the partnership in his capacity as
provided an independent contractor and are not exempt. If
the taxable services provided by Brown in his capacity as an
independent contractor are stated separately from exempt
services provided by Brown in his capacity as a partner, the
exempt services will retain their exemption under 212.0592(9), F.S. Exempt services provided by Brown for
example, may be separately stated in the terms of the
partnership agreement, a contract of employment or similar
document. Taxable services provided by Brown may be
separately stated on an invoice of sale, retainer agreement,
or similar document.

2. 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.

3. Example: Corporations X and Y, neither of which is a
professional corporation within the meaning of this rule
49AER47-10444, form an equal 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 his its
partnership interest. Corporation Y (the service partner)
receives her its partnership interest in exchange solely for
her its services which she provides both in her capacity as
a partner and an independent contractor. Corporation X
provides services to the partnership solely in his its
capacity as an independent contractor and is compensated for
such services separately and apart from his its share of
profits. Corporation X is not separately compensated for
her 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
and the partners are allocated shares of taxable income;
profits; or other cash shares that are not distributed to
the partners but used by the partnership to service debt on
mortgaged partnership property. 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, generally do not
constitute amounts paid for services within the meaning of
s. 212.02(21), F.S., unless such payments are not made in
accordance with the partnership interest of X, within the
meaning of I.R.C. s. 704; and the payments to X for
services were separately stated in an amount less than the
fair market value for such services. Therefore, such
payments made to Corporation X are exempt from the tax on
services. Any Payments made by the partnership to
Corporation Y will be taxable unless the portion
attributable to services provided by Y in her capacity as a
partner are separately stated in an amount equal to the fair
market value of such services. Partnership payments made to
Y for for any purposes other than for the reimbursement of
expenses or capital; or for services provided by Y in her
capacity as a partner however, are not exempt from the tax
on services if whether such services provided by Y in her
capacity as an independent contractor were not separately
stated in an amount equal to the fair market value of such
services and the partnership payments to Y are not made in
accordance with Y's partnership interest. Even if such
payments are made in accordance with Y's partnership
interest; such payments are subject to tax unless the
payments to Y to reduce her tax and financial capital
accounts, and her tax and financial capital accounts are not
established by allocated but undistributed taxable income,
profits, cash flow, or property representing services
previously rendered by Y in any capacity. Taxable payments
are characterized under the terms of the partnership
agreement as other types of payments. Partnership
payments made to a partner for purposes other than as
payment 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
or 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. 620.801, F.S., s. 154(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 with Florida nexus for sales
tax purposes of an affiliated group or the tax affiliate of
such a 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. If the parent
corporation has no Florida nexus, and a tax affiliate has
not been designated (See Rule 12AER87-92, F.A.C.) the
affiliated group shall include all includable members not
unanimously excluded by election of all includable members
with Florida nexus.

1. The election shall be made by the Election to
Exclude Members of an Affiliated Group, Chapter 212, F.S.,
1. Exemption.

Sales of services between included members of an "affiliated group" are excluded from the pre- apportionment tax base of the group.

2. Definition.

(a) A group of includible corporations (other than certain mutual insurance companies described herein) is defined as an affiliated group, for purposes of the State sales and use tax, if it consists of one or more chains of includible corporations; the stock ownership test prescribed in 1.R.C. s. 1504(a) is satisfied; and the group is eligible to file a consolidated return for purposes of the federal income tax.

(b) The stock ownership requirement for affiliation is satisfied if:

1. the common parent of the group is an includible corporation and owns directly (not by attribution) 80 percent of the value and voting power of the stock of one or more of the other includible corporations; and,

2. one or more of the other includible corporations in the group owns directly (not by attribution) 80 percent of the value and voting power of the stock of one or more of the remaining includible corporations other than the common parent.

(c) Being "eligible to file a consolidated tax return for federal income tax purposes" pursuant to s. 220.02(2), F.S., requires only that the tests of affiliation and includability are satisfied. Eligibility does not require that a consolidated federal tax return be filed nor that each includible member file a consent and comply with other procedural requirements in the federal consolidated return regulations promulgated under s. 1502 of the Internal Revenue Code of 1986 (1.R.C.).
(d) An "affiliated group" for purposes of the Florida sales and use tax is defined in s. 212.02(2), F.S., and I.R.C. s. 1504. Any corporation is an includible corporation unless it is a corporation described in I.R.C. s. 1504(b)(1), (b)(3) - (4), or (e). Accordingly, corporations are not includible corporations only if they are: corporations exempt from taxation under I.R.C. s. 501(c); corporations with respect to which an election under I.R.C. s. 936 is in effect for the taxable year (relating to possession tax credit); corporations organized under the China Trade Act of 1922; regulated investment companies and real estate investment trusts subject to tax under I.R.C. Chapter 1; Subchapter M of a domestic international sales corporation (DISC) within the meaning of I.R.C. s. 922(a)(1); or any other corporation (such as a s. 922(a)(1) foreign sales corporation (FSC)) which has accumulated DISC income after December 31, 1984; tax-exempt organizations that are includible corporations under I.R.C. s. 1504(e), for purposes of the federal income tax or foreign corporations other than foreign corporations that are organized under the laws of a country contiguous with the United States for the purpose of complying with the laws of the contiguous country pertaining to title and operation of property, and 100 percent of the stock of such a foreign corporation is owned directly or indirectly by a domestic corporation pursuant to I.R.C. s. 1504(d).

(e) Insurance companies subject to taxation under I.R.C. s. 801 are expressly exempt from the exception prescribed in I.R.C. s. 1504(b)(1) to the general definition of includible corporations. Therefore, insurance companies subject to taxation under I.R.C. s. 801 are includible corporations for purposes of the state sales and use tax even though such insurance companies are includible.
corporations under I.R.C. s. 1504 only to the extent described in I.R.C. s. 1504(c). Moreover, insurance company systems that are subject to s. 629.801, F.S., constitute an affiliated group for purposes of the state sales and use tax regardless of whether such systems:

1. are eligible to file consolidated returns for purposes of the federal income tax; or

2. otherwise satisfy the requirements of an affiliated group within the meaning of I.R.C. s. 1504.

(f) An election may be made to include within the affiliated group a foreign (non-U.S.) parent which satisfies the ownership requirements of s. 1504 of the I.R.C. and which otherwise would be an includible corporation within the meaning of s. 212.02(2), F.S., except that it is a foreign corporation. In order to make the election, it must be established to the satisfaction of the department that such an election would accurately reflect the where the benefit of services is enjoyed and that the election was not made for the purpose of avoiding tax. The election shall be made by the U.S. parent corporation of the affiliated group if such parent has sales and use tax nexus with Florida; or if the parent has no such nexus, by the designated tax affiliate or unanimously by all affiliates having tax nexus with Florida.

(g) Related Business Activity. Various business activities are conducted as a related business activity for purposes of ss. 212.02(2), 212.0592(5) and 212.0591(9)(b), F.S., if the members of the group are related through common ownership and the various business activities are integrated with, dependent upon, or contribute to a flow of value among the members of the group. Two tests are used alternatively to determine whether a corporation consists of a related business for Florida sales and use tax purposes. The first
test is satisfied if the requirements for ownership, operation, or use are satisfied. The second test is referred to as the "contribution/dependency test." Related businesses are present if either test is satisfied.

1. Ownership. When the business is carried on through controlled subsidiaries then the business is related. The statute presumes control where direct ownership is 80 percent or more. This presumption may be overcome if, based upon all of the facts and circumstances surrounding the business activity, the taxpayer proves to the satisfaction of the Department that the business is not related.

2. Operation. A corporation is in a related business if its "staff" activities are related. The various factors considered to evidence related operation include: purchase of auxiliary or incidental items; purchase of equipment; advertising; common accounting facilities; common legal representation; intercompany financing and parent guarantees; employee benefit plans; and, joint efforts in expanding the business.

3. Use. Use relates to executive forces and operational systems, i.e., "line functions." Use does not require a steady flow of raw materials and manufactured goods between the members of the group and can exist without a flow of value among the members of the group, if there is related business activity. Factors considered to evidence use include: intercompany transfer of products; shared officers and directors; transfer of executive personnel; submission of monthly financial statements; uniform management theory; training; interchange of knowledge and expertise; and public representation of a single corporate image.

In determining use, management is emphasized. Integration of management forces is an important consideration.
corporation which satisfies all of the following requirements:

1. The corporation has no nexus with Florida, as nexus is defined for purposes of the sales and use tax (sales tax nexus):

2. The business activities of the excluded corporation are unrelated to any one or more of the business activities conducted by any one of the included corporations; and

3. An election for each member to be excluded from the affiliated group is made pursuant to Rule 12A-1.002, F.A.C., on Form OR-4 (in accordance with the instructions thereon), on or before 60 days following the effective date of this amended rule, or the 20th day of the second calendar month of the fiscal year of the excluded member.

(b) In no event is a parent of an includible member corporation permitted to be electively excluded from the affiliated group under the terms of s. 212.02(2), F.S.

4. Affiliates with Unrelated Business Activities.

(a) Where the affiliated group includes more than one unrelated business, subject to prior authorization by the Department by a technical assistance assessment issued in accordance with s. 213.22, F.S., or Rule 12A-1.002, F.A.C., the pre-apportionment tax base may be divided into the respective parts attributable to the included members of each respective unrelated business and such part be apportioned to this state using the group apportionment fraction for the includible members which conduct the same respective business. The apportioned part of the tax base of each of such unrelated businesses shall be aggregated to determine the total tax liability of each of the included members which separately have tax nexus in this state.

(b) In turn, the separate liability of each included member which has, separately, tax nexus in this state, is
determined by use of its separate apportionment numerators
over the aggregate denominators of all included members
which conduct the separate and discreet business times the
pre-apportionment tax base of that business.

(5) The Sales and Use Tax Base.

(a) All included members of an "affiliated group"
defined in s. 1504(a) of the Internal Revenue Code of 1986,
whose members are includible under subsections (b), (c) or
(d) thereof, as well as certain mutual insurance companies
(as described later herein) are considered a single economic
tity (i.e., the purchaser) for the purpose of establishing
use or consumption of services in Florida pursuant to s.
212.02(2), F.S., and s. 212.0591(9)(b)4., F.S.

(b) The pre-apportionment tax base includes the
purchases from third parties made by all included member
corporations including the parent. As to that portion of
the tax base which is apportionable, generally a single
apportionment fraction is calculated for each included
member of the affiliated group. The portion of the tax
liability of an affiliated group which results from the
application of the single apportionment fraction to that
part of the tax base which is apportioned (rather than
allocated) is the sum of the separate liabilities of each
included member corporation which as a separate entity has
tax nexus in this state in accordance with subsection (6)
hereof unless a tax affiliate is designated in the time and
manner prescribed in subsection (6).

(6) Allocation and Apportionment

(a) An affiliated group is defined in s. 212.02(2),
F.S., for two purposes under Chapter 212, F.S. One purpose
is to exempt intercompany transactions between members of an
affiliated group from sales and use tax on services pursuant
to s. 212.0592(5), F.S. The other purpose is to include
purchases of nongeographically specific services by all of
the members of the affiliated group in the apportionable tax
base for purposes of determining in s. 212.059(3)(b), F.S., where the economic benefit of such services is
enjoyed. Members may be excluded from the affiliated group
for both statutory purposes if the member has neither tax
nexus with this state nor business activity related to that
of the affiliated group. All other affiliates are
statutorily presumed to be economically related for purposes
of determining exemptions and the locus of benefit of
nongeographically specific services purchased by all of the
members of the affiliated group.

(b) The legal obligation to collect and remit both
sales and use taxes due on the sales or use of services in
this state is generally imposed on dealers by s.
212.059(3)(a), F.S. An exception to a dealer's duty to
collect and remit tax due is provided in s. 212.059(3)(b),
F.S., if the purchaser, among other things, has tax nexus
with this state. If the purchaser has no tax nexus with
this state, the legal obligation to collect and remit any
tax due remains on dealers by virtue of the general rule in
s. 212.059(3)(a), F.S. Dealers include any person that
maintains or has within this state, directly or by a
subsidiary, an office, distributing house, sales room or
other place of business as well as persons that merely use
services in this state pursuant to ss. 212.06(2)(f) and (k),
F.S. An affiliate that is a dealer, within the meaning of
any of the provisions of s. 212.06, F.S., and which enjoys
the benefit of nongeographically specific services purchased
by its non-Florida affiliate outside of this state is
obligated to collect and remit the tax due pursuant to s.
212.059(3)(a), F.S.

(c) The sales and use tax due is determined by first
allocating geographically specific services in their entirety either to the state wherein first real or specific tangible personal property having a business situs or to a local market of the purchaser if the services are sold to a local market within the meaning of Rule (212-XXX), F.A.C.

(d) The amount of tax due on nongeographically specific services is determined by a formulaary apportionment method prescribed in s. 212.0591(9)(b)4., F.S. The apportionable portion of the monthly tax liability of a multistate affiliate having tax nexus with this state is determined by multiplying the cost price of nongeographically specific services purchased everywhere by all of the members of the group during the reporting period (hereinafter "apportionable tax base") by a fraction. The numerator of the fraction is the sum of the property, payroll, and double weighted sales of the reporting affiliate, and the denominator of the fraction is the sum of the property, payroll, and double weighted sales for all included members of the affiliated group. Both the numerator and the denominator shall be based on the most recent fiscal year for which a final income tax return was filed prior to the start of the current fiscal year of the reporting affiliate. The apportionable tax base is the actual apportionable tax base for the economic unit during the reporting period, unless an election is made under paragraph (e) hereof. Payments made pursuant to the election in paragraph (e) shall operate as estimated payments. See Rule 12A-7(XXX), F.A.C.

(e) An election may be made by an included member of an affiliated group for the purpose of remitting sales and use taxes on an estimated basis. The election must be consistent with such elections made by other affiliates included in the affiliated group. If the election is
Every sale to the tax affiliate shall be subject to the state
income tax, sales tax, and the separate excise taxes where the
parent is without tax nexus in this state; an included
affiliate with tax nexus in this state, which has a
substantial presence in this state may be designated. Where
the parent has tax nexus with this state the parent shall be
the only member eligible to be designated the tax affiliate.

The petition to designate tax affiliate shall be made by
filing of Petition to Designate Tax Affiliate by Member(s)
of an Affiliated Group; Chapter 212, F.S., (DR-6), dated
January 1, 1986, incorporated and made part of this
rule by reference. The Petition to Designate Tax Affiliate
by Member(s) of an Affiliated Group; Chapter 212, F.S.,
(DR-6) are available, without cost, upon written request
directed to the Department of Revenue, Supply Section,
Tallahassee, Florida 32399-0100.

(h) Upon the prior written consent of the department,
the tax affiliate also may report and remit the monthly tax
liability of the members of the affiliated group having
Florida nexus on one monthly return in lieu of separate
returns for each member. The combined monthly returns filed
by the tax affiliate shall be reconciled with the combined
tax liability due on the supplementary return in the same
manner as that prescribed in paragraph (f) above. The
monthly sales tax liability of an affiliate wholly in this
state, however, shall be 100 percent of the tax due at the
time of the transaction because such an affiliate is
precluded under s. 212.0593(1), F.S., as amended, from
obtaining and presenting an exempt purchase permit. Sales
tax apportioned by such an affiliate on the supplementary
including sales invoices. Use tax will be remitted monthly by an affiliate wholly in this state by the formula apportionment method described herein. An affiliate located wholly outside of this state may avoid any monthly sales tax liability by obtaining and presenting an exempt purchase permit pursuant to s. 212.0593(2), F.S. A multistate purchaser, either with or without nexus, that fails to present an exempt purchase permit must pay 100 percent of the tax due at the time of the transaction and obtain a refund by a separate application for refund rather than by a supplementary return.

(i) Members of an unaffiliated group shall apportion tax liability in the same manner as that utilized for affiliates, except that unaffiliated members will use only their own property, payroll and sales to determine the apportionment fraction. The apportionable tax base will include only the purchases of the separate unaffiliated member. A refund will be available, pursuant to ss. 212.0591(9)(b)1. and 212.0593(3), F.S., to the extent that the unaffiliated member proves to the satisfaction of the Department that the benefit of a nongeographically specific service was enjoyed outside this state.

(7) Registration and Reporting.

(a) Each business location in Florida of each legal entity included in an affiliated group of corporations for Florida sales tax purposes must be registered under the Florida sales tax law. In addition, one or more out-of-state locations for each legal entity with or without Florida sales tax nexus may register at the taxpayer’s option. In any event, each legal entity with Florida sales tax nexus must be represented by at least one dealer registration certificate.

(b) Taxable sales should be reported from or ascribed
to the location at which the largest portion of the cost of performance is incurred. Taxable purchases or use of tangible personal property should be reported from or attributed to the location at which the property is used; however, for tangible personal property without a business situs, the purchase should be reported from the location to which the property was delivered. Taxable purchases of services should be reported from the location which: (a) takes delivery of tangible personal property representing or embodying the result or product of the service; or (b), if (a) is not applicable, the location which contracted for purchase of the service. This paragraph deals only with attribution of a taxable sale or purchase to a particular location for reporting purposes. In no way does this paragraph limit or alter application of the tax.

(c) Monthly Returns: aggregated reporting for multiple locations and/or multiple legal entities.

1. A separate tax return is required for each registered location unless the business requests, by letter, to file on a monthly consolidated or monthly combined basis.

2. Under the monthly combined filing method, all registered locations of a legal entity within a single Florida county are reported on a single tax return (Form DR-15, the standard return).

3. Under the monthly consolidated filing basis, all registered locations of the business are reported on a single tax return; Form DR-15CS. This return is accompanied by a worksheet (Form DR-7) showing taxable sales and purchases by county (67 entries) and out-of-state (1 entry). A separate worksheet must be filed for each legal entity included in the monthly consolidated filing. A monthly consolidated return (Form DR-15CS) may be filed for all
local entities included in the affiliated group, for each
local entity, or for subsets of legal entities. See
subsection (6)(h) hereof.

4. This paragraph deals only with options regarding
monthly remittance of taxes available to taxpayers with
multiple business locations. In no way does this paragraph
limit or alter the requirements regarding combined reporting
for the purpose of establishing taxable purchases.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS;
Section 20, Chapter 87-101, Laws of Florida.
Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
Florida Sections 1, 3 and 9, Chapter 101, Laws of Florida.
History - New 9-03-87.