

AGENDA
FLORIDA DEPARTMENT OF REVENUE

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MEMBERS

Governor Rick Scott
Attorney General Pam Bondi
Chief Financial Officer Jeff Atwater
Commissioner Adam H. Putnam

June 25, 2013

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Services Director
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(850-717-7138)

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

<u>ITEM</u>	<u>SUBJECT</u>	<u>RECOMMENDATION</u>
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1.	Respectfully request approval of the minutes of the April 2, 2013, and April 23, 2013, meetings.	
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(ATTACHMENT 1)

RECOMMEND APPROVAL

2.	Respectfully request adoption of and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes, the following rules:	
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Documentary Stamp Tax: Clarify the application of the documentary stamp tax in bankruptcy proceedings. [Rules 12B-4.013, 12B-4.014, and 12B-4.054, F.A.C.]

(ATTACHMENT 2)

RECOMMEND APPROVAL

3.	Respectfully request approval and authority to publish Notices of Proposed Rule in the Florida Administrative Register for the following rules:	
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Compromise and Settlement: Clarify and update rules relating to the Department of Revenue's authority to compromise or settle tax assessments. [Rules 12.13.001, 12-13.003 (Repeal), 12-13.004, 12-13.0063 (New), 12-13.0064 (New), 12-13.007, 12-13.0075, 12.3008, 12-13.009, and 12-13.010]

Consent Agreements: Specify how the Department of Revenue will maintain records of the positions authorized by the Executive Director to enter into consent agreements to extend the period during which an assessment may be issued or a claim for refund may be filed. [Rule 12-16.004, F.A.C.]

Administration of Waste Tire Fee and Lead-Acid Battery Fee: Clarify and update the provisions relating to the administration of the waste tire fee and lead-acid battery fee imposed by sections 403.718 and 403.71.85, F.S., respectively. [Rules 12A-12.001 and 12A-12.0011, F.A.C.]

(ATTACHMENT 3)

RECOMMEND APPROVAL

ATTACHMENT 1

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T H E C A B I N E T
S T A T E O F F L O R I D A

REPRESENTING:

OFFICE OF FINANCIAL REGULATION

DEPARTMENT OF REVENUE

BOARD OF TRUSTEES

The above agencies came to be heard before
THE FLORIDA CABINET, the Honorable Governor Scott
presiding, in the Flagler Room of Ponce de Leon
Hall at Flagler College, 74 King Street,
St. Augustine, Florida, on Tuesday, April 2, 2013,
commencing at 9:04 a.m.

Reported by:

MARY GRAYBOSCH
Registered Professional Reporter
Certified Realtime Reporter
Notary Public

1 APPEARANCES:

2 Representing the Florida Cabinet:

3 RICK SCOTT
4 Governor

5 PAM BONDI
6 Attorney General

7 JEFF ATWATER
8 Chief Financial Officer

9 ADAM PUTNAM
10 Commissioner of Agriculture

11 SPEAKERS:

12 Commissioner Drew Breakspear, Office of Financial
13 Regulation

14 Interim Executive Director Marshall Stranburg,
15 Department of Revenue

16 Secretary Herschel Vinyard, Board of Trustees

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1 (No audible response.)

2 GOVERNOR SCOTT: Hearing none, the motion
3 carries.

4 MR. BREAKSPEAR: Thank you.

5 GOVERNOR SCOTT: Thanks for being here.

6 Next I'd like to recognize Marshall
7 Stranburg, Interim Executive Director of the
8 Department of Revenue.

9 Good morning, Marshall.

10 MR. STRANBURG: Good morning, Governor,
11 General Bondi, CFO Atwater and Commissioner
12 Putnam.

13 Our first agenda item is we respectfully
14 request approval of the minutes of the
15 December 11, 2012, meeting.

16 GOVERNOR SCOTT: Is there a motion to
17 approve?

18 ATTORNEY GENERAL BONDI: So moved.

19 GOVERNOR SCOTT: Is there a second?

20 CHIEF FINANCIAL OFFICER ATWATER: Second.

21 GOVERNOR SCOTT: Any comments or objections?

22 (No audible response.)

23 GOVERNOR SCOTT: Hearing none, the motion
24 carries.

25 MR. STRANBURG: Thank you. Our second item

1 is, again, we respectfully request adoption of and
2 final approval to file and certify with the
3 Secretary of State under Chapter 120 Florida
4 Statutes, 39 rules identified during the 2011
5 comprehensive rule review as unnecessary or
6 obsolete.

7 These are rules in our general tax program
8 and our child-support-enforcement program.

9 GOVERNOR SCOTT: Is there a motion to
10 approve?

11 ATTORNEY GENERAL BONDI: So moved.

12 GOVERNOR SCOTT: Is there a second?

13 CHIEF FINANCIAL OFFICER ATWATER: Second.

14 GOVERNOR SCOTT: Any comments or objections?

15 (No audible response.)

16 GOVERNOR SCOTT: Hearing none, the motion
17 carries.

18 MR. STRANBURG: Thank you. Our third item is
19 we respectfully request adoption and approval to
20 file and certify with the Secretary of State under
21 Chapter 120 Florida Statutes rules that were
22 identified during our 2011 comprehensive rule
23 review as needing to be updated, clarified or
24 revised to remove outdated provisions.

25 Most of these were as a result of the

1 previous item when we repealed rules and needed to
2 correct rules to eliminate cross-references,
3 update cross-references, things of that nature.

4 These, again, are on our
5 child-support-enforcement program and our general
6 tax administration program.

7 GOVERNOR SCOTT: Is there a motion to
8 approve?

9 ATTORNEY GENERAL BONDI: So moved.

10 GOVERNOR SCOTT: Is there a second?

11 CHIEF FINANCIAL OFFICER ATWATER: Second.

12 GOVERNOR SCOTT: Any comments or objections?

13 (No audible response.)

14 GOVERNOR SCOTT: Hearing none, the motion
15 carries.

16 MR. STRANBURG: Thank you. And our fourth
17 item that we respectfully request approval to --
18 and authority to publish a notice of proposed rule
19 to the Florida Administrative Register concerning
20 the clarification of documentary stamp tax and
21 bankruptcy proceedings.

22 GOVERNOR SCOTT: Is there a motion to
23 approve?

24 CHIEF FINANCIAL OFFICER ATWATER: So move --

25 ATTORNEY GENERAL BONDI: So moved.

1 CHIEF FINANCIAL OFFICER ATWATER: Second.

2 GOVERNOR SCOTT: Any comments or objections?

3 (No audible response.)

4 GOVERNOR SCOTT: Hearing none, the motion
5 carries.

6 MR. STRANBURG: Thank you. I -- I'd like to
7 take now a couple minutes to give you a brief
8 update on some things we've had going on at the
9 Department of Revenue and also to -- to further go
10 on with what exactly Jesse Panuccio was pointing
11 out to show the success that the state has been
12 having through the -- over the last few years as
13 we've been creating more jobs and increasing
14 our -- from our perspective, our tax revenues.

15 The first slide we have up here -- and let me
16 see if I can get that to pop up. Well, we went a
17 little too far.

18 Yeah. Chris, if you -- thank you. If you go
19 forward, our first slide shows our sales-tax
20 collections.

21 And I think, as most of you already realize,
22 sales tax is the lifeblood of a general revenue
23 stream.

24 It's approximately 70 percent -- 73 percent
25 of our general revenue stream. As you can see,

1 over the last few years and what we project
2 through the rest of this year, we've had some very
3 solid growth, about 5- to 6-percent growth in
4 sales-tax receipts.

5 And the thing, I think, that's important to
6 point out with respect to this growth and the
7 growth we're going to talk about in the next few
8 slides is it's a result of economic activity.

9 It's not a result of us broadening our tax
10 base. It's not a result of us increasing our tax
11 rate as you've seen in some other states.

12 We've stayed the course. We've done the
13 right thing, and we're finding now that --

14 GOVERNOR SCOTT: No new taxes.

15 MR. STRANBURG: -- the -- no new taxes -- are
16 working for us.

17 We are -- we are growing. Our economy is
18 increasing.

19 And -- and I think we need to thank you all
20 for the leadership that you've shown on this issue
21 that -- that proves that it is working for us.

22 Now, this next slide shows our
23 documentary-stamp-tax collections. Documentary
24 stamp tax is collected in two major areas.

25 One is on real-estate transfers and the

1 second area then is on the value of notes,
2 mortgages, things of that nature.

3 Again, you can see things are increasing.
4 Things are going up.

5 No increase in the tax rate. No increase in
6 what we're taxing.

7 This is showing us that, yes, we are coming
8 out of our housing slump. Things are getting
9 better. People are purchasing houses.

10 There is credit available for people who
11 either buy a house or, for those who need to
12 refinance their house, money is becoming available
13 to refinance.

14 So, again, we want to show you things --
15 things are progressing upward there.

16 And -- and our next slide also reflects that,
17 as well. It's the mortgage intangible
18 collections.

19 And, again, this is on mortgages, notes,
20 things of that nature. And, again, you see an
21 increase in that activity.

22 And it's really been going up in the last --
23 last year and a half. So we're very optimistic,
24 again, that this is showing that our -- our
25 housing market is coming back and is starting to

1 recover.

2 I'm going to move on now to -- to talk about
3 some -- some things we're doing in our
4 child-support program.

5 If you flip to the next slide, Christian, it
6 shows what we're really focusing on here. And
7 some of the things that I'm going to be talking
8 about are some key factors.

9 One is our customers' expectation in the
10 child-support program that they get quick access.
11 They get electronic access to information and
12 assistance from the Department of Revenue.

13 GOVERNOR SCOTT: Drew [verbatim], what
14 percentage of child-support payments come through
15 the department? Do you know the percentage?

16 MR. STRANBURG: Well, almost all
17 child-support payments come through us through our
18 partners, the clerk of the courts.

19 So even if the -- if a case is not
20 technically one of our cases, our partner, the
21 clerk of the courts, are receiving those payments.

22 There -- there's only a very small number of
23 payments that I would characterize as private
24 payments where one parent is paying another parent
25 that doesn't either flow through our system or the

1 clerks' system.

2 GOVERNOR SCOTT: I don't think most people
3 realize that.

4 MR. STRANBURG: The second thing we're
5 looking at is we're trying to improve the
6 efficiency of our walk-in services.

7 We have a number of our customers who will
8 come to our service centers and who want to find
9 out information about their cases.

10 And we're looking at ways to create more
11 efficient use of our -- not only our space, but
12 also our time and our resources.

13 We're also looking at producing a number of
14 options for our customers to utilize. We're
15 looking at, as I talked about previously,
16 achieving cost savings in what we do.

17 And last, but certainly not least, we're
18 looking at ways of reducing the burdens on our
19 businesses who are partnered with us -- and I'll
20 talk about this a little bit later -- a
21 significant partner with us in collecting child
22 support.

23 Our next slide is -- shows you what we have
24 done to change our walk-in service and delivery
25 model. We are reconfiguring our service centers.

1 You can see up in the upper left-hand corner,
2 the before model was a very old traditional model
3 where you have a waiting area and then our
4 customers would go off to individual interview
5 rooms.

6 We've started reconfiguring some of our
7 larger service centers to -- to increase the
8 efficiency by having it be a walk-up counter
9 model, similar to what you see in banks,
10 historically.

11 GOVERNOR SCOTT: Marshall, are you doing --
12 are you doing private companies? Are they doing
13 this also, places like Amscot and places like
14 that? Do they --

15 MR. STRANBURG: Yeah. I think that's what
16 we're seeing. That's really who we -- we kind of
17 stole this idea from.

18 It's what a lot of private companies are
19 doing. Again, it's getting people in quicker.
20 It's getting them to -- to a service counter
21 faster.

22 It's allowing us also to better utilize our
23 space because we're not having to have individual
24 interview rooms where people have to go to.

25 And what we're finding is we're decreasing

1 our wait times in our service centers from 47
2 minutes to approximately 18 minutes.

3 And we're doing this, again, by reducing the
4 amount of space we have, so we're saving the state
5 money by being able to reduce our -- the space
6 we're utilizing already from -- from some of the
7 private landlords where we have leases.

8 We've now got this model in place in
9 Orlando, Tampa and Crestview.

10 And over this next year, we're going to
11 be expanding to Jacksonville, Clearwater,
12 Port Richey, Cocoa and Fort Lauderdale.

13 So we're very excited about that, and folks
14 are really pleased with -- with the ability to
15 quickly serve our customers.

16 And, also, we're really pleased that we're
17 able to get them serviced quicker and also show
18 some savings to the state by reducing our lease
19 costs.

20 The next thing that we have done is we
21 started a pilot project from a federal grant that
22 we received from the Department of Health and
23 Human Services Office of Child Support
24 Enforcement, our federal partners, to do a
25 web-chat program.

1 And what we were able to do with our web-chat
2 program is when our child-support customers have a
3 question, if they want to know when am I going to
4 be -- if they're a custodial parent, when am I
5 going to be receiving a payment; if they are a
6 payor, has my payment reached my account; has it
7 made it to my -- my child yet.

8 Instead of either having to pick up the phone
9 and call us or having to come in to one of our
10 service centers, they can go on line and have a
11 web chat with one of our agents.

12 We're finding, again, that that is a much
13 more popular way that our society is moving to
14 have information transmitted.

15 And what we also have found is it's much more
16 effective for our service personnel to engage in
17 web chats rather than phone conversations.

18 They can engage in -- in about eight chats
19 per hour, whereas if they were picking up and
20 answering the phone, they could only answer about
21 six phone calls per hour.

22 So we're also -- we're able to decrease our
23 customer-service wait time. Instead of having to
24 wait approximately, on average, about 15 to 20
25 minutes to talk with someone, once they engage in

1 the web chat, they're getting a response within
2 three minutes.

3 COMMISSIONER PUTNAM: People are waiting 20
4 minutes?

5 MR. STRANBURG: Unfortunately, that's what
6 they'd have to do a lot of times. We try to
7 convert them to self-service options if possible,
8 but if they actually want to physically talk to
9 someone, the volume of calls we receive and the
10 number of call agents we have, we find that,
11 unfortunately, sometimes they have to wait upwards
12 of 15 minutes before they can actually talk.

13 COMMISSIONER PUTNAM: What's the trend on
14 that?

15 MR. STRANBURG: The trend, oh, definitely
16 downward. And -- and you can see it's downward
17 'cause, again, we're trying to push more people to
18 some of these self-service options that I'll be
19 talking about in the next slide through the web
20 chats.

21 Also, if they want to come in to our offices,
22 they can come in and talk with us face to face
23 and, again, decrease that wait time.

24 COMMISSIONER PUTNAM: How does that compare
25 to other states?

1 MR. STRANBURG: I -- I think we are -- we are
2 lower than -- from some of our partner states,
3 what we benchmark ourselves against, but, again,
4 it's a matter of we're trying to get more people
5 to realize now it's going to be much more
6 efficient, much more effective.

7 And everybody now, you know, as all of us
8 know, your phone -- your phone is such a
9 tremendous computing device.

10 We're trying to get more people to understand
11 that instead of using that as the phone to call
12 us, you can use that as a tool to either chat with
13 us, as a tool to access your -- your account
14 information, do it that way.

15 I think, as we find more people who we
16 encourage to do that and start doing that, you're
17 going to see our phone times go down, as well,
18 even more than what they have gone down in the
19 past few years.

20 I kind of got ahead of myself talking about
21 our next slide, which talks about our e-services.

22 Again, what we are doing is we are
23 encouraging our folks to access an e-services
24 portal where they can go in and it's a secure
25 system. It's a password and user identification

1 system where they can go in and find out
2 information about their account.

3 They can find out when that payment has been
4 made, when they will be receiving that support
5 payment that's been made to them; if they are a
6 payor, if they've got a delinquency, what their
7 delinquency amount may be.

8 We right now have about 180,000 of our
9 customers that utilize our e-services model. It's
10 an increasing model.

11 We had in February about 10,000 new customers
12 signed up for it. So, Commissioner Putnam, you
13 can see we're trying to get more people to get
14 their information this way.

15 And more people are willing to get their
16 information about their accounts through our
17 e-services portal rather than picking up the phone
18 and calling us on the phone.

19 We also have -- in our service centers, we
20 also have terminals available for those folks who,
21 if they come into a service center and they want
22 to look up the information rather than talk to an
23 agent, if they might not have the ability to
24 access through -- if they have -- if they don't
25 have a phone that allows them to access the

1 Internet, they can come to the service center and
2 do it at a service center rather than having to
3 go -- if they want to go to a library or one of
4 the public places.

5 They can feel more secure doing that at a
6 Department of Revenue site than elsewhere.

7 The next slide talks about some things that
8 we are doing for our employers that we partner
9 with.

10 We collected approximately 1.6 billion
11 dollars worth of child support last year. And of
12 that, you can see, an overwhelming majority of it,
13 968 million, was sent to us by employers through
14 income-deduction orders, income-withholding
15 orders, things of that nature.

16 So what we're do -- looking to do is to try
17 to make the -- those businesses that are our
18 partners have an easier interaction with us.

19 And one of the things that we've done, if you
20 want to flip to the next slide, please, Christian,
21 is we've done what we call EWIO, which is
22 electronic income withholding order program.

23 And this is a program that we've partnered
24 with the federal government to have a format that
25 is a nationwide format so that all businesses can

1 do that with all child-support-enforcement
2 agencies in all the states to submit and have --
3 have the state submit to them, in an electronic
4 format, information about withholding orders that
5 they need to withhold amounts from their employees
6 to pay child support.

7 I think you can see, from the quote we have
8 up there, one company that, when we put up our --
9 started our program and they started to
10 participate in it, they were very happy to -- to
11 do that because prior to having it being done
12 electronically, this was a paper-generating
13 process whereby we would have to send them
14 something in the mail, they would have to then
15 take the time to input all that information into
16 their system.

17 It's coming to them now electronically, if
18 they so wish, popping into their systems. And
19 they can do those -- those deductions
20 automatically, have them start right away.

21 So we're very positive about this. We're
22 looking at adding more and more people every day.
23 And we're looking, as the slide indicates, to have
24 almost 450 companies on board with us in the next
25 couple months.

1 The last thing I want to talk about is the
2 employer services web site that we are going to be
3 bringing up in the next -- probably a little bit
4 later this month.

5 And, again, what we're looking to do is to
6 make it easier for businesses to interact with us.

7 As -- as I talked about, we do have a lot of
8 interaction with businesses.

9 When they hire someone, if they have a
10 support obligation, we want to make sure that we
11 know about that so that we're -- the proper amount
12 of support can be paid so that the child receives
13 it timely.

14 And one of the ways in which we do that is to
15 interact with them and have them provide us their
16 new employee information electronically.

17 We can then get back to them and let them
18 know, hey, this is what you need to do as far as
19 withholding, deductions, things of that nature.

20 If an employee leaves a particular company,
21 we know, okay, we no longer need to expect a
22 payment coming in from you.

23 So, again, we're trying to make it much more
24 easier for businesses to do things electronically.

25 It's much -- as you know, it's much more

1 efficient and much more cost-effective to do it
2 electronically than to do it by paper.

3 So we're working on things to try to make it
4 much more easier, much more efficient and -- and,
5 again, be responsive to businesses as they partner
6 with us to collect child support.

7 GOVERNOR SCOTT: All right, Marshall. Thank
8 you very much.

9 Anybody have any questions?

10 MR. STRANBURG: Did you want me to give you
11 just you a brief update on our one-stop --

12 GOVERNOR SCOTT: Absolutely.

13 MR. STRANBURG: -- the project where I'm at?

14 I think, as most of you know, we discovered,
15 in looking at what businesses had to do in order
16 to register in the State of Florida, they had many
17 different places they had to go.

18 They might have to do a registration with the
19 Department of Revenue, with the Department of
20 Business and Professional Regulation, and it was a
21 very fragmented process.

22 It really was hard for businesses to know
23 what they needed to do, who they needed to do it
24 with, and they were having to enter the same
25 information over and over and over again.

1 Really, it was not a very efficient and
2 business-friendly process for folks who were
3 coming to the State of Florida.

4 So we got tasked last year in the legislative
5 session with being the lead agency in spearheading
6 an effort that we'd already been working on with
7 some of our sister agencies and with the
8 leadership of some of your folks, as well, to
9 create a one-stop business portal.

10 And what we're looking to do is we're looking
11 to ease governmental burdens on businesses to
12 improve government efficiency and create an
13 environment for economic growth in Florida by
14 making the registration system very simple and
15 very easy for businesses here.

16 So we were given a 3-million-dollar
17 appropriation last year to have something up and
18 running by January 1, 2013.

19 Well, right after the point in time we got
20 that money, we got that legislation passed, we
21 realized -- and it's easy for me to stand here and
22 say now -- January 1 of 2013 really wasn't a
23 realistic goal for getting something up and
24 running, I think for a couple reasons.

25 One was we were going to have to get a vendor

1 to assist us in doing that, and we wanted to make
2 sure that we did what we needed to do to make sure
3 that that procurement was done correctly, that we
4 got the best deal for the state and that we have
5 the necessary information from all of our sister
6 agencies to know what our vendor was going to need
7 to do.

8 And then, secondly, we also looked at it from
9 a point of view -- we could have put up something
10 by January 1 of 2013, but it wouldn't have been a
11 very robust system.

12 And we looked at it from a perspective of --
13 it's just like building any kind of building. We
14 wanted to build a good solid foundation in -- in
15 building this portal that we could grow on 'cause
16 we see this as something that not only is a
17 benefit for new businesses, but we think it could
18 serve a lot of other existing businesses in the
19 state.

20 We can expand it to where we can push and
21 pull information from businesses.

22 So we wanted to be sure we're building this
23 correctly, we're building it the right way, and so
24 we realized that we needed to maybe take a step
25 back and do it right rather than rush something

1 out there.

2 So what we've done is we've put together a
3 phased approach in building this. We have -- we
4 have our core initial agencies that we've been
5 working with on this project:

6 Business and professional -- Department of
7 Business and Professional Regulation, Department
8 of Lottery, Department of Management Services,
9 Department of Lottery, and we have been working
10 with them over -- over the last year to get up and
11 running the one-stop portal.

12 In December of last year, we entered into a
13 contract with E-Government Solutions to be the
14 vendor to assist us in building the portal.

15 And we're very excited about that. We
16 started work on it in January. Again, I want to
17 thank those agencies that have been partnering
18 with us, Business and Professional Regulation,
19 Lottery, Department of State, Department of
20 Management Services.

21 And we're also starting to reach out. We've
22 reached out to some of the folks in your office,
23 CFO Atwater, about -- about getting information to
24 your office on workers'-comp area.

25 And we're going to be reaching out to

1 Executive Director Panuccio about bringing DEO
2 into the mix, as well.

3 And what we're going to be creating is we're
4 going to be creating a step-by-step -- what we
5 call a wizard program where businesses will be
6 able to enter information to a series of
7 questions.

8 It will guide them through the questions they
9 need to answer. And when they've answered all the
10 questions, it's going to tell them, okay, based
11 upon your answers, you need to get a dealer
12 registration with the Department of Revenue.

13 If you want to sell lottery tickets, you need
14 to get -- get good with the lottery.

15 If you have a professional license you have
16 to get, you have to get that license through DBPR.

17 They will then send that information to those
18 respective agencies, populate their systems and
19 pop that registration, pop that permit, pop
20 that -- that approval back to that business from
21 those various agencies.

22 I think the key thing here is we are going to
23 be populating the systems of those agencies.

24 We're not asking them to change their systems
25 because I think it would have been the worst thing

1 in the world for us to create this system and have
2 to come back to you or the legislature to say we
3 need money to have DBPR or DBO, the lottery, to
4 change their systems as part of the one-stop
5 effort.

6 That's not at all what we're going to do.
7 We're going to build a system that's going to be
8 able to interact with their systems and get that
9 information in to those agencies.

10 So I would be remiss if I didn't, at this
11 point, just give kudos to the Department of State.
12 They've been a very good partner with us.

13 They're going to be the first agency we bring
14 on board this summer in the system. They've done
15 a lot to do some things that will allow us to use
16 their single business identifier.

17 They're opening themselves up to a whole new
18 world. They've been dealing with business
19 entities for a number of years.

20 Well, now they've got to deal with something
21 they've never dealt with before, sole
22 proprietorships at the Department of State. So
23 they're doing that.

24 We're going to bring them on board in June;
25 the Department of Revenue in July; DFS, we're

1 going to have information to you guys beginning in
2 July; lottery in August; September, management
3 services; December, business and professional
4 regulation.

5 And as we're bringing them all up, we're
6 going to be planning our phase two to reach out to
7 our other sister agencies and also the local
8 governments.

9 We're bringing them on board, too, because
10 they're another key player in this. You need to
11 also know what you need to do with local
12 governments as well as the state government.

13 So that's just a quick update on what we're
14 doing. We're very excited about the progress
15 we've made.

16 And we look forward to bringing this in for a
17 successful landing and to really do some good, not
18 only for the state and for the businesses that are
19 coming to Florida, but also we think down the
20 road, the businesses are that here, allowing them
21 one place they can go to interact with the state
22 instead of having to go to multiple agencies.

23 So with that, I'll answer any questions if
24 you'd like.

25 GOVERNOR SCOTT: Well, I think it's a big

1 opportunity on one stop, not just at the state
2 level, but at the local level, also, over time.

3 MR. STRANBURG: Yes.

4 GOVERNOR SCOTT: The way you're doing it
5 makes all the sense in the world.

6 MR. STRANBURG: And we've got a lot of local
7 governments already reaching out to us, wanting to
8 know when we're going to come to them with that.

9 And we've told them, we'll be there soon.
10 Just be patient, but you know you're an important
11 part of this effort.

12 COMMISSIONER PUTNAM: I'd like -- I'd like
13 our folks to be in phase two.

14 We have -- have a fair number of businesses
15 that only have to register.

16 There's no -- there's no permit. There's no
17 license. There's no double-checking anything.
18 There's no making sure they have a handwashing
19 sink. There's none of that.

20 It's just simply registering to do business
21 in the State of Florida.

22 It would, I would think, easily be a part of
23 your next round of expansion.

24 MR. STRANBURG: Definitely, Commissioner. We
25 do have you on our radar screens. We know that

1 you're another one of those agencies that we'll be
2 reaching out to in phase two.

3 So, as I said, as we get deeper into the
4 summer, that's when we're going to be reaching out
5 to some of the phase-two agencies and start
6 interacting with them, see what their needs are,
7 learn more about your systems, what need -- what
8 information you need so that, again, we can adapt
9 that registration system and be able to get that
10 information to -- to your agencies as part of
11 one-stop.

12 Thank you very much.

13 GOVERNOR SCOTT: Thank you, Marshall.

14 All right. Now I'd like to recognize
15 Herschel Vinyard, Secretary of the Department of
16 Environmental Protection.

17 MR. VINYARD: Good morning and welcome to
18 northeast Florida.

19 GOVERNOR SCOTT: Your hometown.

20 MR. VINYARD: Yes, yes, just up the road.

21 All right. There are three items on today's
22 agenda.

23 The first one is the submittal of minutes
24 from your March 7 cabinet meeting. We recommend
25 approval.

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

DIVISION OF BOND FINANCE
STATE BOARD OF ADMINISTRATION
FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

The above agencies came to be heard before
THE FLORIDA CABINET, the Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03, The
Capitol, Tallahassee, Florida, on Tuesday, April 23,
2013, commencing at approximately 9:03 a.m.

Reported by:

MARY ALLEN NEEL
Registered Professional Reporter
Florida Professional Reporter
Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
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APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

ADAM PUTNAM
Commissioner of Agriculture

* * *

I N D E X

Appointment Parole Commission	Approved	7
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Appointment Department of Revenue	Approved	8
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DIVISION OF BOND FINANCE
(Presented by BEN WATKINS)

ITEM	ACTION	PAGE
1	Approved	10
2	Received	10
3	Approved	11
4	Approved	12
5	Approved	13
6	Approved	13
7	Approved	14

STATE BOARD OF ADMINISTRATION
(Presented by ASH WILLIAMS)

ITEM	ACTION	PAGE
1	Approved	17
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3	Approved	18
4	Approved	18
5	Approved	18
6	Approved	19

FLORIDA LAND AND WATER ADJUDICATORY COMMISSION
(Presented by MARK KRUSE)

ITEM	ACTION	PAGE
1	Approved	20
2	Approved	21

CERTIFICATE OF REPORTER		22
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1 GOVERNOR SCOTT: Another appointment we have
2 today is the executive director of the Department
3 of Revenue. I would like to nominate Marshall
4 Stranburg for this position. Marshall has been
5 with the Department since 1998 and served as the
6 interim executive director for the last nine
7 months. He has proven himself to be a capable
8 leader, and his experience makes him an excellent
9 candidate for the position.

10 Would any of the Cabinet members like to make
11 remarks?

12 Is there a motion to appoint Marshall
13 Stranburg as the executive director of the
14 Department of Revenue at a salary of \$128,000 per
15 year?

16 CFO ATWATER: So moved.

17 GOVERNOR SCOTT: Is there a second?

18 ATTORNEY GENERAL BONDI: Second.

19 GOVERNOR SCOTT: Any comments or objections?
20 Hearing none, the motion carries.

21 Congratulations, Marshall. Would you like to
22 say a few words?

23 MR. STRANBURG: Thank you, Governor, General
24 Bondi, CFO Atwater, and Commissioner Putnam, and
25 thank you for your confidence and trust in me in

1 this position. I've enjoyed working with you and
2 your staffs over the past few months and look
3 forward to continue working with them.

4 I just want to take one slight moment to thank
5 a couple of folks, first of all, the fabulous
6 people we have at the Department of Revenue. The
7 work that they do has made my job over these last
8 few months very easy, very pleasurable, and I know
9 I look forward to continue working with them.

10 And I also want to thank some of my
11 predecessors in this job, those people who kind of
12 mentored me at the Department, starting with Tom
13 Herndon, Larry Fuchs, and then two folks I met out
14 in the hallway this morning when I got here, Jim
15 Zingale and Lisa Vickers, who were my immediate
16 predecessors. I look to them for inspiration and
17 hope to continue the good things that they did
18 while they were head of the Department of Revenue.

19 And again, thank you for your trust in me. I
20 look forward to working with you and serving you
21 and the citizens of our great state.

22 GOVERNOR SCOTT: Congratulations, Marshall.

23 MR. STRANBURG: Thank you.

24

25

ATTACHMENT 2



Executive
Director
Marshall Stranburg

June 25, 2013

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Michael Sevi, Director of Cabinet Affairs
Karl Rasmussen, Deputy Director of Cabinet Affairs
Jacob Horner, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Director of Cabinet Affairs
Abby Vail, Senior Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Director of Legislative and Cabinet Affairs
Erin Sumpter, Deputy Director of Cabinet Affairs
Andrew Fay, Deputy Director of Legislative Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Jim Boxold, Director of Cabinet Affairs
Brooke McKnight, Deputy Director of Cabinet Affairs

THRU: Marshall Stranburg, Executive Director

FROM: Andrea Moreland, Director of Legislative and Cabinet Services

SUBJECT: Requesting Adoption and Approval to File and Certify Proposed Rules

Statement of Sections 120.54(3)(b) and 120.541, F.S. Impact: No impact.

The Department has reviewed the proposed rules for compliance with Sections 120.54(3)(b) and 120.541, F.S. The proposed rules will not likely have an adverse impact on small business, small counties, or small cities, and they are not likely to have an increased regulatory cost in excess of \$200,000 within 1 year. Additionally, the proposed rules are not likely to have an adverse impact or increased regulatory costs in excess of \$1,000,000 within 5 years.

What is the Department Requesting? The Department requests final adoption of the following proposed rules, and approval to file and certify them with the Secretary of State under Chapter 120, Florida Statutes.

- Documentary Stamp Tax - Transfers Made Pursuant to a Confirmed Bankruptcy Plan
(*Rules 12B-4.013, 12B-4.014, and 12B-4.054, F.A.C.*)

Why are the proposed rules necessary? The proposed rule amendments are necessary to clarify when documentary stamp tax applies to transfers made under a bankruptcy plan, in accord with the holding of the U.S. Supreme Court. (*Rules 12B-4.013, 12B-4.014, 12B-4.054, F.A.C.*)

What do these proposed rules do? The proposed amendments clarify that the documentary stamp tax does not apply to documents that transfer an interest in real property, or written obligations to pay or other evidence of indebtedness, when the transfer or issuance occurs under a bankruptcy plan after the plan has been confirmed by the court. This proposed change is in accord with the holding of the U.S. Supreme Court in Florida Department of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33 (2008). The proposed rule amendments also remove redundancy regarding transfers related to bankruptcy proceedings.

Were comments received from external parties? No.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-4, FLORIDA ADMINISTRATIVE CODE
DOCUMENTARY STAMP TAX
AMENDING RULES 12B-4.013, 12B-4.014 AND 12B-4.054

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12B-4.013, F.A.C. (Conveyances Subject to Tax), and Rule 12B-4.014, F.A.C. (Conveyances Not Subject to Tax), clarify that a document that transfers Florida real property pursuant to a bankruptcy plan under 11 U.S.C. Section 1129 after the bankruptcy plan has been confirmed is not subject to documentary stamp tax and that transfers prior to confirmation of the plan are subject to tax.

The proposed amendments to Rule 12B-4.054, F.A.C. (Exempt Transactions), clarify that a promissory note or other written obligation to pay money, bond, mortgage, trust deed, security agreement, or other evidence of indebtedness filed or recorded in Florida issued pursuant to a bankruptcy plan under 11 U.S.C. Section 1129 after the plan has been confirmed is not subject to documentary stamp tax.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The Supreme Court of the United States concluded that 11 U.S.C. Section 1146(a) affords a stamp-tax exemption only to transfers made pursuant to a Chapter 11 bankruptcy plan that has been confirmed under 11 U.S.C. Section 1129 (Florida Department of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33 (2008)).

The proposed amendments to Rule Chapter 12B-4, F.A.C. (Documentary Stamp Tax), are necessary to clarify the application of documentary stamp tax to the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer pursuant to Section 1146(a) under a bankruptcy plan confirmed under 11 U.S.C. Section 1129.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

AUGUST 8, 2012

A Notice of Proposed Rule Development published in the Florida Administrative Weekly on July 20, 2012 (Vol. 38, No. 29, p. 2906), to advise the public of the proposed changes to Rule Chapter 12B-4, F.A.C. (Documentary Stamp Tax), and to provide that, if requested in writing, a rule development workshop would be held on August 8, 2012. No request was received by the Department. No written comments were received by the Department.

SUMMARY OF PUBLIC HEARING

HELD ON APRIL 2, 2013

The Governor and Cabinet, sitting as head of the Department of Revenue, met on April 2, 2013, and approved the publication of the Notice of Proposed Rule for changes to Rule Chapter 12B-4, F.A.C. (Documentary Stamp Tax). A notice for the public hearing was published in the Florida Administrative Register on March 14, 2013 (Vol. 39, No. 51, pp. 1339-1340).

SUMMARY OF RULE HEARING

MAY 21, 2013

A Notice of Proposed Rule published in the Florida Administrative Register on April 22, 2013 (Vol. 39, No. 78, pp. 2063-2065), to advise the public of the proposed changes to Rule Chapter 12B-4, F.A.C. (Documentary Stamp Tax), and to provide that, if requested in writing, a rule hearing would be held on May 21, 2013. No request was received by the Department. No written comments were received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12B-4, FLORIDA ADMINISTRATIVE CODE
DOCUMENTARY STAMP TAX
AMENDING RULES 12B-4.013, 12B-4.014 AND 12B-4.054

12B-4.013 Conveyances Subject to Tax.

(1) through (18) No change.

~~(19) Transfer in Bankruptcy: Sale of real property by trustees, debtors, or receivers in federal bankruptcy proceedings is subject to tax unless the transfer is made pursuant to a plan confirmed under Section 1129 of the Bankruptcy Code, is a precondition or is essential to the confirmation of the plan, or is necessary to consummate or implement a confirmed plan. The debtor must be a party to the transfer. If the bankruptcy court does not ultimately confirm the plan under 11 U.S.C. Section 1129, the transfer would not be exempt pursuant to 11 U.S.C. Section 1146(c), and would be subject to tax. (1932 Op. Att’y. Gen. Fla. 1931 Biennial Report, Page 1039 (Sept. 14, 1932)) (11 U.S.C. Section 1146(c); In re Jacoby Bender, Inc., 758 F.2d 840 (2d Cir. 1985); In re Smoss Enterprises Corp., 54 Bankr. 950 (E.D.N.Y. 1985)).~~

~~Cross Reference—subsections 12B 4.014(15), 12B 4.054(30), F.A.C.~~

(20) through (29) Renumbered (19) through (28) No change.

Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.02 FS. History—Revised 8-18-73, Formerly 12A-4.13, Amended 12-11-74, 2-21-77, 5-23-77, 12-26-77, 7-3-79, 9-16-79, 11-29-79, 3-27-80, 12-23-80, 12-30-82, Formerly 12B-4.13, Amended 12-5-89, 6-4-90, 2-13-91, 2-16-93, 10-18-94, 12-30-97, 7-28-98, 1-4-01, 5-4-03, 4-5-07,_____.

12B-4.014 Conveyances Not Subject to Tax.

(1) through (14) No change.

(15) Confirmed Transfer in Bankruptcy Plan: A document that transfers an interest in Florida Sale of real property by trustees, debtors or receivers in federal bankruptcy proceedings is subject to tax unless the transfer is made pursuant to a Chapter 11 plan that was confirmed under Section s- 1129 of the Bankruptcy Code; (Title 11 U.S.C.) prior to the date of is a precondition or essential to the confirmation of the plan, or is necessary to consummate or implement a confirmed plan and the debtor is a party to the transfer is not taxable. A document that transfers Florida real property prior to confirmation of the bankruptcy plan is subject to tax. If the bankruptcy court does not ultimately confirm the plan under 11 U.S.C. § 1129, the transfer would not be exempt pursuant to 11 U.S.C. § 1146(c), and would be subject to tax. (11 U.S.C. Section §1146(a)(e); Florida Department of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33 (2008)). In re Jacoby Bender, Inc., 758 F.2d 840 (2d Cir. 1985); In re Smoss Enterprises Corp., 54 Bankr. 950 (E.D.N.Y. 1985)).

Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.02 FS. History— Revised 8-18-73, Formerly 12A-4.14, Amended 2-21-77, 12-26-77, 12-23-80, Formerly 12B-4.14, Amended 12-5-89, 6-4-90, 2-13-91, 2-16-93, 10-18-94, 12-30-97, 1-4-01, 4-14-09,_____.

12B-4.054 Exempt Transactions.

(1) through (29) No change.

(30) Confirmed Bankruptcy Plan: A Under 11 U.S.C. 1146(c), the issuance, transfer, or exchange of a promissory note, bond or other written obligation to pay for the payment of money, bond, or the making, delivery or recordation of a mortgage, trust deed, security agreement or

other evidence of indebtedness filed or recorded in Florida issued, ~~is exempt from the documentary stamp tax if it is done pursuant to a Chapter 11 plan which was confirmed by the federal bankruptcy court under 11 U.S.C. Section 1129 of the Bankruptcy Code (Title 11 U.S.C.), prior to the date of the issuance is not taxable, is a precondition or essential to the confirmation of the plan, or is necessary to consummate or implement a confirmed plan and the debtor is a party to the transaction. If the bankruptcy court does not ultimately confirm the plan under 11 U.S.C. 1129, the transfer would not be exempt pursuant to 11 U.S.C. 1146(e), and would be subject to tax. (In re Baldwin League of Independent Schools, 110 Bankr. 125 (S.D.N.Y. 1990)). However, the bankruptcy exemption under (11 U.S.C. Section 1146(a)(e); Florida Department of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33 (2008)), does not apply to a mortgage or trust deed given to a third party lender by a non-debtor purchaser of real property from a seller in bankruptcy, even if the sale is pursuant to a confirmed plan. (In re Eastmet Corporation, 907 F. 2d 1487 (4th Cir. 1990))~~

~~Cross Reference—subsections 12B 4.013(22) and 12B 4.014(15), F.A.C.~~

Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.08, 201.09, 201.10, 201.11, 201.21, 201.22, 201.23, 201.24, 517.32 FS. History—Revised 8-18-73, Formerly 12A-4.54, Amended 2-21-77, 11-29-79, 3-5-80, 4-11-80, 7-27-80, 12-23-80, 2-12-81, Formerly 12B-4.54, Amended 3-30-81, 12-3-81, 12-29-86, 12-5-89, 2-13-91, 10-18-94, 12-30-97, 7-28-98, 1-4-01, 5-4-03, _____.

ATTACHMENT 3



Executive
Director
Marshall Stranburg

June 25, 2013

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Michael Sevi, Director of Cabinet Affairs
Karl Rasmussen, Deputy Director of Cabinet Affairs
Jacob Horner, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Director of Cabinet Affairs
Abby Vail, Senior Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Director of Legislative and Cabinet Affairs
Erin Sumpter, Deputy Director of Cabinet Affairs
Andrew Fay, Deputy Director of Legislative Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Jim Boxold, Director of Cabinet Affairs
Brooke McKnight, Deputy Director of Cabinet Affairs

THRU: Marshall Stranburg, Executive Director

FROM: Andrea Moreland, Director of Legislative and Cabinet Services

SUBJECT: Requesting Approval to Hold Public Hearing on Proposed Rules

Statement of Sections 120.54(3)(b) and 120.541, F.S. Impact: No impact.

The Department has reviewed the proposed rules for compliance with Sections 120.54(3)(b) and 120.541, F.S. The proposed rules will not likely have an adverse impact on small business, small counties, or small cities, and they are not likely to have an increased regulatory cost in excess of \$200,000 within 1 year. Additionally, the proposed rules are not likely to have an adverse impact or increased regulatory costs in excess of \$1,000,000 within 5 years.

What is the Department Requesting? Section 120.54(3)(a), F.S., requires the Department to obtain Cabinet approval to hold public hearings for the development of proposed rules. The Department therefore requests approval to publish Notices of Proposed Rule in the Florida Administrative Register for these proposed rules:

- Clarify and update rules affecting compromise or settlement of tax assessments (*Rule Chapter 12-13, F.A.C.*)
- Provide how the Department maintains records regarding those positions authorized to enter into consent agreements (*Rule 12-16.004, F.A.C.*)
- Clarify the administration of the fee imposed on motor vehicle tires and batteries under sections 403.718 and 403.7185, F.S. (*Rules 12A-12.001 and 12A-12.0011, F.A.C.*)

Compromise or Settlement of Tax, Penalty, or Interest

Why are the proposed rules necessary? Section 213.21(5), F.S., requires the Department to establish by rule guidelines and procedures for the compromise or settlement of tax, penalty, or interest. The rules are clarified and updated to reflect the following:

- The compromise of tax, penalty, and interest when a taxpayer fails to apply the appropriate bracket system when collecting sales tax. (*Section 212.12(14), F.S.*)
- The compromise of interest when the Department determines that a delay in determination of the amount due is attributable to the action or inaction of the Department. (*Section 213.21(3)(a), F.S.*)
- The compromise of penalty when the taxpayer failed to collect sales tax based on a good faith belief that the tax was not due. (*Section 213.21(9), F.S.*)
- The compromise of penalties imposed for failure to timely file a sales tax return, or to timely pay tax due with a return. (*Section 213.21(10), F.S.*)
- The imposition of a specific penalty on transactions when the purchaser who would have been eligible to make tax-exempt purchases, but failed to register or to obtain a consumer's certificate of exemption. This penalty is imposed in lieu of the tax, penalty, and interest otherwise due on the transactions. (*Section 212.07(9), F.S.*)
- The manner in which the Department will maintain records of the positions authorized by the Executive Director to enter into closing agreements for the compromise or settlement of taxes, penalties and interest.

What do these proposed rules do? The proposed amendments provide guidelines and procedures for additional compromise or settlement authority. In addition, to ease the burden on taxpayers, the proposed rules limit the conditions for which a taxpayer must submit a written request to receive a compromise or settlement. (*Rule Chapter 12-13, F.A.C.*)

Were comments received from external parties? No.

Positions Authorized to Enter Into Consent Agreements

Why are the proposed rules necessary? Section 213.23, F.S., authorizes the Executive Director of the Department to designate positions within the Department that may enter into consent agreements with a taxpayer to extend the period during which an assessment may be issued or a claim for refund may be filed. This rule change is necessary to provide how the Executive Director of the Department will designate positions authorized to enter into consent agreements and where the records for designated positions are maintained. (*Rule 12-16.004, F.A.C.*)

What do the proposed rules do? The proposed amendments provide how the Department maintains records of those positions authorized by the Executive Director of the Department to enter into consent agreements.

Were comments received from external parties? No.

Administration of Waste Tire Fee and Lead-Acid Battery Fee

Why are the proposed rules necessary? Florida law imposes a fee on persons who sell at retail new motor vehicle tires and a fee on persons who sell at retail new or remanufactured lead-acid batteries. The Department has received numerous questions regarding the application of the new tire fee to tires used on various types of vehicles and whether various types of lead-acid batteries are subject to the battery fee. These rule changes are needed to clarify the definition of “motor vehicle” for purposes of the new tire fee, providing examples of various types of vehicles, to clarify the definitions of “new lead-acid battery” and “remanufactured lead-acid battery,” and to reorganize the rules to improve readability and to simplify the provisions of the rules. (*Rules 12A-12.001 and 12A-12.0011, F.A.C.*)

What do the proposed rules do? The proposed amendments provide that tires used on racing vehicles that are not operated on Florida highways are not subject to the new tire fee, clarify definitions of the terms “motor vehicle,” “new lead-acid battery,” and “remanufactured lead-acid battery” for purposes of the fees; and reorganize and simplify the rules.

Were comments received from external parties? No.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-13, FLORIDA ADMINISTRATIVE CODE
COMPROMISE AND SETTLEMENT
AMENDING RULES 12-13.001, 12-13.004, 12-13.007,
12-13.0075, 12-13.008, 12-13.009, AND 12-13.010
REPEALING RULE 12-13.003
CREATING RULES 12-13.0063 AND 12-13.0064

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12-13.001, F.A.C. (Scope of Rules), provide that the rule chapter, as amended, includes provisions for the settlement or compromise of outstanding liabilities for tax, penalty, interest, and services fees, as provided in Sections 212.07(9), 212.12(14), 213.21, 213.24(3), and 215.34, F.S.

The proposed repeal of Rule 12-13.003, F.A.C. (Request for Settlement or Compromise), removes provisions regarding a taxpayer's request for settlement or compromise that are redundant of Rule 12-13.008, F.A.C. (Procedures for Compromise and Settlement of Taxes, Interest, and Penalties), as amended, and removes unnecessary provisions regarding requests for settlement or compromise that are not submitted to the Department in writing.

The proposed amendments to Rule 12-13.004, F.A.C. (Delegation of Authority to Determine Settlements or Compromises), provide that delegations of authority authorized pursuant to Section 213.21, F.S., by the Executive Director of the Department to settle or compromise a taxpayer's assessment will be in writing, signed by the Executive Director, and

maintained by the agency clerk in the Office of the General Counsel.

The creation of Rule 12-13.0063 (Grounds for Finding Department Delay in the Determination of an Amount Due), includes the provisions of Section 213.21(3)(a), F.S., and provides when the Department will compromise interest to the extent that the delay in determining an amount due is attributable to the action or inaction of the Department.

The creation of Rule 12-13.0064 (Relief for Inadvertent Sales and Use Tax Registration Errors), provides, consistent with the provisions of Section 212.07(9), F.S., when a vendor or purchaser qualifies to pay a mandatory penalty instead of the taxes, penalties, and interest that would otherwise be due on transactions for which the purchaser did not pay tax to the vendor. The failure to pay the tax to the vendor must be based on a good faith belief that the transaction was a tax-exempt purchase for resale or was a tax-exempt purchase by a tax-exempt organization.

The proposed amendments to Rule 12-13.007, F.A.C. (Grounds for Reasonable Cause for Compromise of Penalties), remove: (1) a reference rendered obsolete by the proposed amendments to Rule 12-13.004, F.A.C.; and (2) requirements for taxpayers to submit the facts and circumstances of the exercise of ordinary care and prudence to the Department in writing, allowing the Department to document the facts and circumstances of the exercise of ordinary care and prudence by the taxpayer in the Department's records.

The proposed amendments to Rule 12-13.0075, F.A.C. (Guidelines for Determining Amount of Compromise): (1) provide when the Department is authorized under Section 213.21(10), F.S., to compromise sales tax penalties for failure to file a complete and accurate return, or for failure to timely pay the tax due on a return, when the taxpayer has one noncompliant filing event in the preceding 12-month period; (2) provide when the Department is

authorized under Section 213.21(9), F.S., to settle or compromise any penalty imposed under Section 212.12, F.S., for failure to collect based on a good faith belief that the tax, surtax, or surcharge was not due; (3) provide when a dealer will not be held liable for tax, penalty, or interest under Section 212.12(14), F.S., when the dealer failed to apply the appropriate tax bracket system when collecting sales tax; (4) provide when the administrative collection processing fee imposed under Section 213.24(3), F.S., may be waived due to extraordinary circumstances; (5) provide when the service fee for returned payments imposed by Section 215.34(2), F.S., will be compromised for unintentional errors by the taxpayer, the financial institution, or the Department; (7) clarify that the Department will compromise all penalties when payment of delinquent tax and interest results from voluntary, written self-disclosure; and (8) remove provisions redundant of Rule 12-13.007(9), F.A.C.

The proposed amendments to Rule 12-13.008, F.A.C. (Procedures for Compromise and Settlement of Taxes, Interest, and Penalties), provide that a taxpayer will only be required to submit a written request for compromise or settlement of outstanding liabilities for tax, penalty, interest, or service fees when: (1) the request to settle or compromise is for an amount greater than \$30,000; (2) the complexity of the issues involved requires that the taxpayer submit a written request to explain the issues; or, (3) the taxpayer asks to submit the request in writing. Department employees authorized to settle or compromise such outstanding liabilities continue to be required to document the facts and circumstances of the settlement or compromise in the Department's records.

The proposed amendments to Rule 12-13.009, F.A.C. (Closing Agreements): (1) remove provisions regarding the delegation of authority by the Executive Director of the Department that are unnecessary; and (2) remove the incorporation, by reference, of Form DR-812, Closing

Agreement, which does not meet the definition of a “rule,” as provided in Section 120.52(16), F.S., and is not required to be adopted as a rule.

The proposed amendments to Rule 12-13.010, F.A.C. (Special Provisions Applicable to Compromise of Estate Taxes), remove provisions regarding the delegation of authority by the Executive Director of the Department that are unnecessary.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The proposed changes to Rule Chapter 12-13, F.A.C. (Compromise and Settlement), are necessary to: (1) update provisions for administering the Department’s authority to compromise or settle outstanding liabilities for tax, penalty, interest, and services fees granted in Sections 212.07(9), 212.12(14), 213.21, 213.24(3), and 215.34(2), F.S.; (2) remove the requirement that a taxpayer’s written request be required for the Department to settle or compromise such outstanding liabilities; and (3) remove unnecessary or redundant provisions.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

AUGUST 8, 2012

A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on July 20, 2012 (Vol. 38, No. 29, pp. 2891 - 2893), to advise the public of the proposed changes to Rule Chapter 12-13, F.A.C. (Compromise and Settlement), and to provide that, if

requested in writing, a rule development workshop would be held on August 8, 2012. No request was received by the Department. No written comments were received by the Department.

After further review of provisions regarding delegations of authority issued by the Executive Director of the Department, the proposed amendments to Rule 12-17.004, F.A.C. (Delegation of Authority) were revised to provide that the Executive Director of the Department is authorized to issue a delegation of authority to designate those positions authorized to enter into stipulated time payment agreements and that any such delegation will be in writing, signed by the Executive Director, and maintained by the agency clerk in the Office of the General Counsel.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

COMPROMISE AND SETTLEMENT

RULE NO: RULE TITLE:

- 12-13.001 Scope of Rules
- 12-13.003 Request for Settlement or Compromise
- 12-13.004 Delegation of Authority to Determine Settlements or Compromises
- 12-13.0063 Grounds for Finding Department Delay in the Determination of an Amount Due
- 12-13.0064 Relief for Inadvertent Sales and Use Tax Registration Errors
- 12-13.007 Grounds for Reasonable Cause for Compromise of Penalties
- 12-13.0075 Guidelines for Determining Amount of Compromise
- 12-13.008 Procedures for Compromise and Settlement of Taxes, Interest, and Penalties
- 12-13.009 Closing Agreements
- 12-13.010 Special Provisions Applicable to Compromise of Estate Taxes

PURPOSE AND EFFECT: The purpose of the proposed changes to Rule Chapter 12-13, F.A.C. (Compromise and Settlement), is to: (1) update provisions for administering the Department's authority to compromise or settle outstanding liabilities for tax, penalty, interest, and services fees granted in Sections 212.07(9), 212.12(14), 213.21, 213.24(3), and 215.34(2), F.S.; (2) remove the requirement that a taxpayer's written request be required for the Department to settle or compromise such outstanding liabilities; and (3) remove unnecessary or redundant provisions.

SUMMARY: The proposed amendments to Rule 12-13.001, F.A.C. (Scope of Rules), provide that the rule chapter, as amended, includes provisions for the settlement or compromise of outstanding liabilities for tax, penalty, interest, and services fees, as provided in Sections

212.07(9), 212.12(14), 213.21, 213.24(3), and 215.34(2), F.S.

The proposed repeal of Rule 12-13.003, F.A.C. (Request for Settlement or Compromise), remove provisions regarding a taxpayer's request for settlement or compromise that are redundant of Rule 12-13.008, F.A.C. (Procedures for Compromise and Settlement of Taxes, Interest, and Penalties), as amended, and remove unnecessary provisions regarding requests for settlement or compromise that are not submitted to the Department in writing.

The proposed amendments to Rule 12-13.004, F.A.C. (Delegation of Authority to Determine Settlements or Compromises), provide that delegations of authority authorized pursuant to Section 213.21, F.S., by the Executive Director of the Department to settle or compromise a taxpayer's assessment will be in writing, signed by the Executive Director, and maintained by the agency clerk in the Office of the General Counsel.

The creation of Rule 12-13.0063 (Grounds for Finding Department Delay in the Determination of an Amount Due), includes the provisions of Section 213.21(3)(a), F.S., and provide when the Department will compromise interest to the extent that the delay in determining an amount due is attributable to the action or inaction of the Department.

The creation of Rule 12-13.0064 (Relief for Inadvertent Sales and Use Tax Registration Errors), provides, consistent with the provisions of Section 212.07(9), F.S., when a vendor or purchaser qualifies to pay a mandatory penalty instead of the taxes, penalties, and interest that would otherwise be due on transactions for which the purchaser did not pay tax to the vendor. The failure to pay the tax to the vendor must be based on a good faith belief that the transaction was a tax-exempt purchase for resale or was a tax-exempt purchase by a tax-exempt organization.

The proposed amendments to Rule 12-13.007, F.A.C. (Grounds for Reasonable Cause for

Compromise of Penalties), remove: (1) a reference rendered obsolete by the proposed amendments to Rule 12-13.004, F.A.C.; and (2) requirements for taxpayers to submit the facts and circumstances of the exercise of ordinary care and prudence to the Department in writing, allowing the Department to document the facts and circumstances of the exercise of ordinary care and prudence by the taxpayer in the Department's records.

The proposed amendments to Rule 12-13.0075, F.A.C. (Guidelines for Determining Amount of Compromise): (1) provide when the Department is authorized under Section 213.21(10), F.S., to compromise sales tax penalties for failure to file a complete and accurate return, or for failure to timely pay the tax due on a return, when the taxpayer has one noncompliant filing event in the preceding 12-month period; (2) provide when the Department is authorized under Section 213.21(9), F.S., to settle or compromise any penalty imposed under Section 212.12, F.S., for failure to collect based on a good faith belief that the tax, surtax, or surcharge was not due; (3) provide when a dealer will not be held liable for tax, penalty, or interest under Section 212.12(14), F.S., when the dealer failed to apply the appropriate tax bracket system when collecting sales tax; (4) provide when the administrative collection processing fee imposed under Section 213.24(3), F.S., may be waived due to extraordinary circumstances; (5) provide when the service fee for returned payments imposed by Section 215.34(2), F.S., will be compromised for unintentional errors by the taxpayer, the financial institution, or the Department; (7) clarify that the Department will compromise all penalties when payment of delinquent tax and interest results from voluntary, written self-disclosure; and (8) remove provisions redundant of Rule 12-13.007(9), F.A.C.

The proposed amendments to Rule 12-13.008, F.A.C. (Procedures for Compromise and Settlement of Taxes, Interest, and Penalties), provide that a taxpayer will only be required to

submit a written request for compromise or settlement of outstanding liabilities for tax, penalty, interest, or service fees when: (1) the request to settle or compromise is for an amount greater than \$30,000; (2) the complexity of the issues involved requires that the taxpayer submit a written request to explain the issues; or, (3) the taxpayer asks to submit the request in writing. Department employees authorized to settle or compromise such outstanding liabilities continue to be required to document the facts and circumstances of the settlement or compromise in the Department's records.

The proposed amendments to Rule 12-13.009, F.A.C. (Closing Agreements): (1) remove provisions regarding the delegation of authority by the Executive Director of the Department that are unnecessary; and (2) remove the incorporation, by reference, of Form DR-812, Closing Agreement, which does not meet the definition of a "rule," as provided in Section 120.52(16), F.S., and is not required to be adopted as a rule.

The proposed amendments to Rule 12-13.010, F.A.C. (Special Provisions Applicable to Compromise of Estate Taxes), remove provisions regarding the delegation of authority by the Executive Director of the Department that are unnecessary.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND

LEGISLATIVE RATIFICATION: The Agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A Statement of Estimated Regulatory Cost has not been prepared by the agency. The Agency has determined that the proposed rule is not expected to require legislative ratification based on the Statement of Estimated Regulatory Cost or if no Statement of Estimated Regulatory Cost is required, the information expressly relied upon and described herein: 1) no requirement for the

Statement of Economic Regulatory Costs (SERC) was triggered under Section 120.541(1), F.S.; and 2) based on past experiences the updates to procedural rules regarding the compromise or settlement of outstanding liabilities for tax, penalty, interest, or service fees, and rules of this nature, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S. Any person who wishes to provide information regarding a Statement of Estimated Regulatory Costs, or provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 212.07(9)(c), 213.06(1), 213.21(5), (9) FS.

LAW IMPLEMENTED: 212.07(9), 212.12(14), 213.05, 213.015(18), (20), 213.21, 213.24(3), 215.34(2) FS.

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: [To be determined.]

PLACE: [To be determined.]

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850) 617-8347. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800) 955-8770 (Voice) and (800) 955-8771 (TTY).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-7610.

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-13, FLORIDA ADMINISTRATIVE CODE
COMPROMISE AND SETTLEMENT
AMENDING RULES 12-13.001, 12-13.004, 12-13.007,
12-13.0075, 12-13.008, 12-13.009, AND 12-13.010
REPEALING RULE 12-13.003
CREATING RULES 12-13.0063 AND 12-13.0064

12-13.001 Scope of Rules. The rules set forth in this chapter shall be used by the Executive Director or the Executive Director's designee, as set forth hereinafter, in the exercise of the authority to settle and compromise liability for tax, interest, ~~and penalty~~, and service fees granted by Sections 212.07(9), 212.12(14), Section 213.21, 213.24(3), and 215.34(2), F.S. However, special provisions applicable to settlement and compromise of estate taxes, interest, and penalty imposed pursuant to Chapter 198, F.S., are set forth in Rule 12-13.010, F.A.C. Rulemaking Authority 212.07(9)(c), 213.06(1), 213.21(5), (9) FS. Law Implemented 212.07(9), 212.12(14), 213.05, 213.21, 213.24(3), 215.34(2) FS. History—New 5-23-89, Amended 8-10-92, 10-2-01,_____.

12-13.003 Request for Settlement or Compromise.

~~(1) Subsections 213.21(2)(a) and (3), F.S., authorize the Executive Director, or the Executive Director's designee, to enter into closing agreements settling or compromising a liability for tax, interest, or penalty under any of the chapters specified in Section 72.011(1), F.S.~~

~~(2)(a) No tax, interest, penalty, or service fee shall be compromised or settled unless the taxpayer first submits a request to compromise or settle tax, interest, penalty, or service fees.~~

~~Such request must be in writing if:~~

- ~~1. The amount requested to be compromised is greater than \$30,000; or~~
- ~~2. The taxpayer asks to submit the request in writing; or~~
- ~~3. The complexity of the issue(s) involved requires that the taxpayer submit a written request that explains the issue(s).~~

~~(b) The Department will accept a taxpayer's oral or electronic request for compromise or settlement, if:~~

- ~~1. The request for a compromise is for an amount less than or equal to \$30,000; and~~
- ~~2. The request is not subject to either of the criteria discussed in subparagraph 2. or 3. of paragraph (a) of this subsection.~~

~~(c) The taxpayer must establish in his or her request:~~

~~1. In regard to tax or interest, doubt as to the taxpayer's liability for tax or interest, or actual lack of collectibility of the tax or interest as demonstrated to the satisfaction of the Department by audited financial statements or other suitable evidence acceptable to the Department. Grounds for finding doubt as to liability and doubt as to collectibility, respectively, are set forth in further detail in Rules 12-13.005 and 12-13.006, F.A.C.~~

~~2. In regard to penalty, that the noncompliance was due to reasonable cause and not to willful negligence, willful neglect, or fraud. The taxpayer shall be required to set forth the facts and circumstances which support the taxpayer's basis for compromise and which demonstrate the existence of reasonable cause for compromise of the penalty or service fee and such other information as may be required by the Department.~~

~~3. In regard to the service fee, when a financial institution error results in a draft, order, or check being returned to the Department, the taxpayer will be required to submit to the Department a written statement from the financial institution. The written statement must give the detail of the error(s) and explain why the financial institution was at fault. The statement must be on the financial institution's letterhead.~~

~~4. Grounds for finding reasonable cause are set forth in further detail in Rule 12-13.007, F.A.C.~~

~~Rulemaking Authority 20-05(5), 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21(2)(a), (3), (5) FS. History-New 5-23-89, Amended 8-10-92, 11-15-94, 10-2-01, Repealed _____.~~

12-13.004 Delegation of Authority to Determine Settlements or Compromises.

(1)(a) Authority to settle and compromise tax, interest, and penalty liabilities, and requests for refunds has, in addition to the statutory authorization in Section 213.21, F.S., been delegated to the Executive Director of the Department by the Governor and Cabinet as the head of the Department, pursuant to Rule 12-3.007, F.A.C.

(b) The Executive Director is authorized to settle and compromise tax, interest, and penalty, and refund requests in all matters in litigation, including litigation pursuant to Section 72.011, F.S.

(c) In all other instances, the Executive Director is authorized to settle and compromise tax, interest, and penalty, and refund requests where the amount of tax compromised is \$250,000 or less. Any tax compromise of more than \$250,000, excepting only those cases in litigation or those cases in which a taxpayer has reasonably relied on a written determination issued by the

Department, must be approved by the Governor and Cabinet, as the head of the Department.

~~(2) Cases in Litigation.~~

~~(a) Authority is delegated to the Deputy Executive Directors, the General Counsel, and the Deputy General Counsel of the Department to settle and compromise tax, interest, or penalty in cases where a tax matter is in litigation pursuant to Section 72.011, F.S.~~

~~(b) Authority is delegated to any Assistant General Counsel to settle and compromise tax or interest of \$62,500 or less and penalty of \$125,000 or less.~~

~~(3) Cases in Protest. In cases involving a tax matter in protest, authority to settle and compromise is delegated as follows:~~

~~(a) For compromise of amounts of tax of \$250,000 or less, and compromise of interest and penalty in any amount, to the Deputy Executive Directors, the General Counsel, and the Deputy General Counsel.~~

~~(b) For compromise of amounts of tax or interest of \$62,500 each or less and of penalty of \$250,000 or less to any Assistant General Counsel.~~

~~(c) For compromise of the following amounts of tax, interest, or penalty to the Office of Technical Assistance and Dispute Resolution and the General Tax Administration Program:~~

Positions	Tax	Interest	Penalty
Technical Assistance and Dispute Resolution			
Director	\$125,000	\$125,000	Any Amount
Deputy Director	\$125,000	\$125,000	Any Amount
Revenue Program Administrators I and II	\$ 62,500	\$ 62,500	\$250,000
Senior Attorneys	\$ 12,500	\$ 12,500	\$ 75,000

Attorneys	\$ 12,500	\$ 12,500	\$ 75,000
Tax Law Specialists	\$ 12,500	\$ 12,500	\$ 75,000
Senior Tax Specialists	\$ 12,500	\$ 12,500	\$ 75,000
General Tax Administration Program			
Program Director	\$125,000	\$125,000	Any Amount
Deputy Program Director	\$125,000	\$125,000	Any Amount
Regional Managers	\$ 62,500	\$ 62,500	\$250,000
Service Center Managers	\$ 1,250	\$ 1,250	\$ 75,000
Tax Audit Supervisors	—0-	—0-	\$ 37,500
Tax Specialists	—0-	—0-	\$ 3,750
Revenue Specialist	—0-	—0-	\$ 3,750
Taxpayer Services Process			
Process Manager	\$ 62,500	\$ 62,500	\$250,000
Revenue Program Administrators	\$ 2,500	\$ 2,500	\$ 75,000
Tax Specialist Administrators	\$ 2,500	\$ 2,500	\$ 75,000
Revenue Administrators	\$ 2,500	\$ 2,500	\$ 75,000
Revenue Managers	\$ 1,250	\$ 1,250	\$ 12,500
Compliance Support Process			
Process Manager	\$ 62,500	\$ 62,500	\$250,000

Revenue Program Administrators	\$ 12,500	\$ 12,500	\$ 75,000
Tax Law Specialists	\$ 12,500	\$ 12,500	\$ 75,000
Senior Tax Specialists	\$ 12,500	\$ 12,500	\$ 75,000
Government Analysts II	\$ 12,500	\$ 12,500	\$ 75,000

(4) Collection Cases. In cases involving a tax matter related to billings or assessments that have been referred for collection, authority to settle and compromise is delegated as follows:

(a) For compromise of amounts of tax of \$250,000 or less, and compromise of interest and penalty in any amount, to the Deputy Executive Directors, the General Counsel, and the Deputy General Counsel.

(b) For compromise of amounts of tax or interest of \$25,000 each or less and penalty of \$62,500 or less, to any Assistant General Counsel.

(c) For compromise of the following amounts of tax, interest, or penalty to the General Tax Administration Program:

Positions	Tax	Interest	Penalty
General Tax Administration Program			
Program Director	\$125,000	\$125,000	Any Amount
Deputy Program Director	\$125,000	\$125,000	Any Amount
Regional Managers	\$ 62,500	\$ 62,500	\$250,000
Service Center Managers	\$ 1,250	\$ 1,250	\$ 75,000
Revenue Administrators	\$ 1,250	\$ 1,250	\$ 12,500
Tax Specialists	\$ 1,250	\$ 1,250	\$ 12,500

Tax Audit Supervisors	—0	—0	\$ 37,500
Revenue Specialists	—0	—0	\$ 3,750
Taxpayer Services Process			
Process Manager	\$ 62,500	\$ 62,500	\$250,000
Revenue Program Administrators	\$ 2,500	\$ 2,500	\$ 75,000
Revenue Administrators	\$ 2,500	\$ 2,500	\$ 75,000
Tax Specialist Administrators	\$ 2,500	\$ 2,500	\$ 75,000
Revenue Managers	\$ 1,250	\$ 1,250	\$ 12,500
Tax Specialists	—0	—0	\$ 12,500
Revenue Specialists	—0	—0	\$ 3,750
Compliance Support Process			
Process Manager	\$ 62,500	\$ 62,500	\$250,000
Revenue Program Administrators	\$ 12,500	\$ 12,500	\$ 75,000
Returns and Revenue Process			
Process Manager	\$ 62,500	\$ 62,500	\$250,000
Tax Specialist Administrators	\$ 2,500	\$ 2,500	\$ 75,000
Revenue Manager	\$ 1,250	\$ 1,250	\$ 12,500
Revenue Specialists	—0	—0	\$ 3,750

~~(5) Audit Cases. In cases involving an audit of the taxpayer, or an audit conducted pursuant to a refund request, prior to initiation of litigation pursuant to Section 72.011, F.S., or expiration of the period for initiating same, or upon initial receipt of a protest involving penalty issues only, authority to settle and compromise is delegated as follows:~~

~~(a) For compromise of amounts of tax of \$250,000 or less, and compromise of interest or penalty in any amount, to the Deputy Executive Directors, the General Counsel, and the Deputy General Counsel.~~

~~(b) For compromise of amounts of tax or interest of \$125,000 each or less and penalty in any amount, to the Program Director and Deputy Program Director in the General Tax Administration Program.~~

~~(c) For compromise of the following amounts of tax, interest, or penalty to the General Tax Administration Program:~~

Positions	Tax	Interest	Penalty
General Tax Administration Program			
Program Director	\$125,000	\$125,000	Any Amount
Deputy Program Director	\$125,000	\$125,000	Any Amount
Regional Managers	\$ 62,500	\$ 62,500	\$250,000
Service Center Managers	\$ 1,250	\$ 1,250	\$ 75,000
Senior Tax Audit Administrators	\$ 1,250	\$ 1,250	\$ 75,000
Revenue Administrators	\$ 1,250	\$ 1,250	\$ 12,500
Tax Audit Supervisors	—0—	—0—	\$ 37,500
Tax Specialists	—0—	—0—	\$ 3,750

Revenue Specialist	—0	—0	\$ 3,750
Taxpayer Services Process			
Process Manager	\$ 62,500	\$ 62,500	\$250,000
Compliance Support Process			
Process Manager	\$ 62,500	\$ 62,500	\$250,000
Revenue Program Administrators	\$ 12,500	\$ 12,500	\$ 75,000
Tax Law Specialists	\$ 1,250	\$ 1,250	\$ 37,500
Senior Tax Specialists	\$ 1,250	\$ 1,250	\$ 37,500
Government Analysts II	\$ 1,250	\$ 1,250	\$ 37,500

(6) Refund Cases. In cases involving refund requests that have not been referred for audit, prior to initiation of litigation pursuant to Section 72.011, F.S., or prior to expiration of the period for initiating same, authority to settle and compromise is delegated as follows to the Office of General Counsel and to the General Tax Administration Program:

Positions	Tax	Interest	Penalty
Office of General Counsel			
General Counsel	\$250,000	Any Amount	Any Amount
Deputy General Counsel	\$250,000	Any Amount	Any Amount
General Tax Administration Program			
Program Director	—0—	—0—	Any Amount
Deputy Program Director	—0—	—0—	Any Amount
Refunds and Revenue Distribution Process			
Process Manager	—0—	—0—	\$100,000
Senior Tax Audit Administrator	—0—	—0—	\$ 30,000
Tax Audit Supervisors	—0—	—0—	\$ 5,000

~~(7) In all other circumstances not previously described in this rule, authority to settle and compromise tax in amounts of \$250,000 or less and interest and penalty in any amount is delegated to the Deputy Executive Directors, the General Counsel, and the Deputy General Counsel.~~

~~(2)(8)(a) When the Executive Director delegates authority to settle and compromise to specific employees or positions, as authorized by Section 213.21, F.S., that are not provided in this rule, the delegation will be in writing, signed by the Executive executive Director, and will~~

~~be on a temporary basis pursuant to the following circumstances:~~

~~1. The issue assigned to the employee exceeds the monetary amount the employee is currently authorized to settle or compromise pursuant to this rule; or~~

~~2. The employee has assumed the duties of another employee who has authority, or a higher authority, to settle or compromise tax, interest, and penalty, and refund requests.~~

~~(b) A temporary delegation of authority to any employee or position will be for a specified time period of no more than 2 years.~~

~~(c) Such delegations cannot grant authority to compromise tax in excess of \$250,000.~~

~~(d) Copies of written delegations of authority are maintained on file with the agency clerk in the Office of General Counsel.~~

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History—
New 5-23-89, Amended 8-10-92, 10-24-96, 10-2-01, 10-4-04, 9-13-10,_____.

12-13.0063 Grounds for Finding Department Delay in the Determination of an Amount Due.

(1)(a) A taxpayer's liability for interest associated in any of the chapters specified in Section 72.011 (1), F.S., will be settled or compromised, in whole or in part, to the extent that the Department finds that the delay in the determination of an amount due is attributable to the action or inaction of the Department.

(b) Only the portion of interest due that is attributable to the Department's delay will be compromised. The compromises of interest will be made by the Executive Director or the Executive Director's designee, in accordance with Rule 12-13.004, F.A.C., upon a determination that sufficient grounds exist to support a compromise or settlement.

(2) The compromise authority under this rule only arises if the Department has initiated an audit or inquiry documented in writing, and only to the interest that accrues if there is undue delay by the Department in pursuing the audit or inquiry. The taxpayer is not entitled to a compromise of interest based on the fact that the Department did not initiate an audit or inquiry at an earlier date.

(3) This provision does not apply when the delay is attributable to action or inaction on the part of the taxpayer such as:

(a) Failure to produce adequate records;

(b) Requests for extensions of time for the convenience of the taxpayer; or

(c) Failure to timely respond to the Department's requests for information.

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.015(18),

213.21(3)(a) F.S. History-New _____ .

12-13.0064 Relief for Inadvertent Sales and Use Tax Registration Errors.

(1) A vendor or purchaser will not be held liable for the tax, interest, or penalty that would otherwise be due when:

(a) The purchaser did not pay to the vendor tax due on a taxable transaction based on a good faith belief that the transaction was a nontaxable purchase for resale or the transaction was exempt as a purchase by a tax-exempt organization; and,

(b) Instead of the taxes, penalties, and interest that would otherwise be due, the purchaser pays the mandatory penalties.

(2) To qualify, the purchaser must meet all of the following conditions:

(a) At the time of purchase, the purchaser was not registered as a dealer or did not hold a

valid Florida Consumer's Certificate of Exemption issued by the Department;

(b) At the time of purchase, the purchaser was qualified to be registered with the Department as a dealer or was entitled to obtain a Florida Consumer's Certificate of Exemption;

(c) Before requesting application of the provisions of this subsection, the purchaser has registered as a dealer or has obtained a valid Florida Consumer's Certificate of Exemption;

(d) The transaction would otherwise qualify as a tax-exempt sale to the purchaser for resale or as a tax-exempt sale to an organization holding a valid Florida Consumer's Certificate of Exemption, except that the purchaser was not registered as a dealer or did not hold a valid Florida Consumer's Certificate of Exemption at the time of purchase; and

(e) The purchaser establishes justifiable cause for failure to register as a dealer or to obtain a Florida Consumer's Certificate of Exemption before making the purchase.

(3) The establishment of justifiable cause is demonstrated by such factors as:

(a) The complexity of the transaction;

(b) The purchaser's business experience and history;

(c) Whether the purchaser sought advice on its tax obligations, and whether the advice was followed; or,

(d) Any remedial action taken by the purchaser.

(4) The purchaser or vendor must apply for relief:

1. Before the Department has initiated an audit or other action or inquiry; or

2. If any audit or other action or inquiry has been initiated, within seven days after being informed in writing by the Department that the purchaser was required to be registered with the Department or to obtain a Florida Consumer's Certificate of Exemption.

(5) Instead of tax, penalties, and interest that would otherwise have been due on

transactions, one of the following penalties must be paid by either the vendor or the purchaser when the purchaser or vendor:

(a) Applies for relief before an audit or other action or inquiry has been initiated by the Department, a mandatory penalty in the amount of the lesser of \$1,000 or 10 percent of the total tax due on qualifying transactions; or,

(b) Applies for relief after an audit or other action or inquiry has been initiated by the Department, a mandatory penalty in the amount of the lesser of \$5,000 or 20 percent of the total tax due on qualifying transactions.

(6) When tax, penalty, or interest have been waived under the provisions of this rule, any subsequent retail sale of any taxable item or service is subject to tax, plus any applicable penalties, interest, or service fees.

Rulemaking Authority 213.06(1), 212.07(9)(c) FS. Law Implemented 212.07(9), 213.015(20) F.S. History-New _____.

12-13.007 Grounds for Reasonable Cause for Compromise of Penalties.

(1)~~(a)~~ The Executive Director or the Executive Director's designee, ~~as enumerated in Rule 12-13.004, F.A.C.,~~ will make a determination of whether the taxpayer's noncompliance was due to reasonable cause and not to willful negligence, willful neglect, or fraud based on the facts and circumstances of the specific case. The standard used in this determination ~~is shall be~~ whether the taxpayer exercised ordinary care and prudence and was nevertheless unable to comply.

~~(b) The exercise of ordinary care and prudence may be demonstrated by facts and circumstances as stated in writing by the taxpayer. Additionally, in those cases when a~~

~~Department employee has information or knowledge supporting the taxpayer's assertion of ordinary care and prudence, a finding of reasonable cause may be based upon such additional information or knowledge, provided the finding of reasonable cause is documented to reflect such information or knowledge.~~

(c) through (d) Renumbered (b) through (c) No change.

(2) through (14) No change.

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History—New 5-23-89, Amended 8-10-92, 5-18-94, 10-2-01, _____.

12-13.0075 Guidelines for Determining Amount of Compromise.

(1) through (2) No change.

(3) Penalties Specific to Sales and Use Tax and Transient Rental Taxes.

(a) For purposes of this subsection:

1. "Sales tax or transient rental tax liability" means sales and use taxes, discretionary sales surtaxes, convention development taxes, tourist development taxes, and tourist impact taxes reported on a sales and use tax return and remitted to the Department.

2. "Noncompliant filing event" means the failure to timely file a complete and accurate sales and use tax return or failure to timely pay the amount of the tax reported on a sales and use tax return. Noncompliant filing events include:

a. Sales and use tax returns that are not timely filed;

b. Sales and use tax payments that are not timely remitted in full;

c. Incomplete or inaccurate sales and use tax returns; or,

d. Any sales tax or transient rental tax liability or delinquency that remains outstanding

after 30 days from the date the Department issues notification to the taxpayer.

(b) The Department will settle or compromise penalty imposed under Section 212.12(1)(a) or (2)(a), F.S., for a noncompliant filing event without an oral or written request from the taxpayer under the following conditions:

1. For taxpayers who file sales and use tax returns and remit sales tax or transient rental tax liabilities monthly, or an alternative-period basis as provided in Rule 12A-1.056(1)(d), F.A.C., such penalties will be settled or compromised when the taxpayer has:

a. No noncompliant filing event in the immediately preceding 12-month period and no unresolved sales tax or transient rental tax liability resulting from a noncompliant filing event; or

b. One noncompliant filing event in the immediately preceding 12-month period that was resolved through payment of tax and interest and the filing of a sales and use tax return within 30 days after notification by the Department, and no unresolved sales tax or transient rental tax liability resulting from a noncompliant filing event.

2. For taxpayers who file sales and use tax returns and remit sales tax or transient rental taxes quarterly, such penalties will be settled or compromised if the taxpayer has no noncompliant filing event in the immediately preceding 12-month period and no unresolved sales tax or transient rental tax liability resulting from a noncompliant filing event.

(c)1. The penalties under Section 212.12(1)(a) or (2)(a), F.S., imposed on any taxpayer who has had two or more noncompliant filing events in the immediately preceding 12-month period will be settled or compromised by the Department when the taxpayer demonstrates that the noncompliant filing event was due to extraordinary circumstances.

2. For purposes of this subsection, “extraordinary circumstances” means the occurrence of events beyond the control of the taxpayer, such as the death of the taxpayer, acts of war or

terrorism, natural disasters, fire, or other casualty, or the nonfeasance or misfeasance of the taxpayer's employees or representatives responsible for compliance with the taxpayer's sales tax or transient rental tax liability. To demonstrate the nonfeasance or misfeasance of an employee or representative, the taxpayer must show that the principals of the business lacked actual knowledge of the noncompliance and that the noncompliance was resolved within 30 days after actual knowledge.

(4) Penalties Specific to Failure to Collect Certain Taxes.

(a) Any penalty imposed under Section 212.12, F.S., for failure to collect sales tax, discretionary sales surtax, convention development tax, or rental car surcharge will be settled or compromised when:

1. The taxpayer's failure to collect the tax, surtax, or surcharge was based on a good faith belief that the tax, surtax, or surcharge was not due on a transaction; and

2. Because of the good faith belief that the transaction was not taxable, the taxpayer is now unable to charge and collect the tax, surtax, or surcharge from the purchaser.

(b) To request a compromise of penalties, the taxpayer must substantiate:

1. Why the taxpayer failed to collect the tax, surtax, or surcharge; and

2. Why the taxpayer is unable to collect the tax, surtax, or surcharge due on the transaction from the purchaser.

(5) Failure to Collect Sales Tax Based on the Tax Bracket System.

(a) When the Department determines that a dealer collected and remitted sales tax by rounding the tax due to the nearest whole cent and failed to apply the appropriate tax bracket system provided in Section 212.12, F.S., the dealer will not be held liable for additional tax, penalty, and interest when the dealer:

1. Acted in a good faith belief that rounding to the nearest whole cent was the proper method of determining tax;

2. Timely reported and remitted all sales taxes collected on each transaction, as required by Section 212.12, F.S.; and,

3. Executes a written agreement with the Department agreeing to future compliance with the laws and rules concerning brackets and the proper application of the tax bracket system to the dealer's transactions.

(6) Administrative Collection Processing Fee.

(a) The Department will waive or reduce the administrative collection processing fee imposed under Section 213.24(3), F.S., when the taxpayer demonstrates that the failure to pay the full amount due on the initial notification of the collection event within 90 days was due to extraordinary circumstances.

(b) For purposes of this subsection, "collection event" means when a taxpayer fails to:

1. Timely file a complete return;
2. Timely pay the full amount reported on a return; or
3. Timely pay the full amount due resulting from an audit after all appeal rights have expired or the result has been finally determined.

(c) For purposes of this subsection, "extraordinary circumstances" means the occurrence of events beyond the control of the taxpayer, such as the death of the taxpayer, acts of war or terrorism, natural disasters, fire, or other casualty, or the nonfeasance or misfeasance of the taxpayer's employees or representatives responsible for complying with the taxes and fees listed in Section 213.05, F.S., and the unemployment compensation tax. To demonstrate the nonfeasance or misfeasance of an employee or representative, the taxpayer must show that the

principals of the business lacked actual knowledge of the collection event and any notification of the collection event.

(7) Service Fees for Returned Payments. When an unintentional error committed by the issuing financial institution, the taxpayer, or the Department results in a draft, order, or check being returned to the Department, and the unintentional error is substantiated by the Department, the service fee for returned payments imposed by Section 215.34(2), F.S., will be compromised by the Department. When the unintentional error is attributed to the issuing financial institution, the taxpayer will be required to submit to the Department a written statement from the financial institution, providing details of the error.

(8)(3) Voluntary Self-Disclosure of Liability.

(a) When payment of delinquent tax and interest results from a voluntary, written self-disclosure by the taxpayer, which predates any contact with the taxpayer by the Department, the Department will compromise all penalties.

(b) No change.

~~(c) The presumption of reasonable cause does not apply when the taxpayer is registered with the Department or has routinely filed returns with the Department and the taxpayer's self-disclosure relates to a delinquency or deficiency that is obvious and would routinely generate a billing if not otherwise self-disclosed.~~

(4) through (6) Renumbered (9) through (11) No change.

(12)(7) Subsections (2) through (11)(6) are intended to provide examples and guidance to taxpayers and Department employees, but should not be construed to limit the compromise of penalties to only those circumstances described in such subsections. However, no compromise is authorized in situations involving fraud, willful negligence, or willful neglect on the part of the

taxpayer.

Rulemaking Authority 212.07(9)(c), 213.06(1), 213.21(5), (9) FS. Law Implemented 212.07(9), 212.12(14), 213.05, 213.21, 213.24(3) FS. History—New 8-10-92, Amended 10-2-01,_____.

12-13.008 Procedures for Compromise and Settlement of Taxes, Interest, and Penalties.

(1)(a) The Department will consider compromise or settlement of the taxpayer's liability for tax, interest, ~~or~~ penalty, or service fees only upon its receipt of the taxpayer's ~~written~~ request ~~that the same be settled and compromised under Section 213.21(3), F.S.~~ A However, a written request is ~~not~~ required to be submitted to the Department when: for the compromise or settlement of penalty and returned check service fee amounts of \$30,000 or less:

1. The request to settle or compromise is for an amount greater than \$30,000;

2. The complexity of the issue(s) involved requires that the taxpayer submit a written request that explains the issue(s); or,

3. The taxpayer asks to submit the request in writing.

(b) The taxpayer's request must ~~should~~ include:

~~1.(a)~~ The taxpayer's name, address, and taxpayer identifying number;

~~2.(b)~~ The type of tax and, if applicable, the type of penalty and service fees, and the taxable period(s) involved;

~~3.(c)~~ The amount of tax, interest, ~~or~~ penalty, service fees involved; and

~~4.(d)~~ A statement of the basis for settlement or compromise, including the facts and circumstances which substantiate the settlement or compromise ~~following:~~

~~1. In the case of tax or interest, the taxpayer's basis for doubt as to liability or collectibility, and the facts and circumstances which support the existence of such doubt; and~~

~~2. In the case of penalty, the taxpayer's basis for reasonable cause, and the facts and circumstances which support the existence of reasonable cause and which indicate the absence of willful negligence, willful neglect, or fraud.~~

~~(2) When a Department employee has additional knowledge or information supporting the taxpayer's request for compromise, the finding in support of a compromise may be based upon such knowledge or information, provided the basis for compromise is documented in writing.~~

~~(2)(3) A Department employee is authorized to settle or compromise tax, penalty, interest, or service fees within the employee's authority when ~~it is determined that~~ sufficient evidence exists to support the settlement or compromise ~~a finding of reasonable cause despite the fact that no written request has been made by the taxpayer.~~ The authorized employee must document ~~person exercising the~~ facts and circumstances of Department's authority shall prepare full documentation of any request and the settlement or compromise in, ~~including the basis for finding reasonable cause, for the Department's record.~~~~

~~(4) The taxpayer's request for compromise shall be filed upon receipt of a billing, notice, proposed assessment, or assessment, and shall be filed with the office issuing such billing, notice, proposed assessment, or assessment. This subsection is intended to expedite requests for compromise and settlement of taxes, interest, and penalties, but it does not alter deadlines specified in Rule Chapter 12-6, F.A.C.~~

Rulemaking Authority 212.07(9)(c), 213.06(1), 213.21(5), (9) FS. Law Implemented 212.07(9), 212.12(14), 213.05, 213.21, 215.34(2) FS. History—New 5-23-89, Amended 8-10-92, 5-18-94, 10-24-96, 10-2-01, _____.

12-13.009 Closing Agreements.

(1) No change.

(2) When a written closing agreement is necessary, the Department will ~~shall~~ prepare a ~~the~~ agreement on form DR-812, Closing Agreement, and forward it to the taxpayer. The taxpayer must ~~shall~~ sign the agreement and return it to the Department.

(a) through (c) No change.

~~(d) Any person delegated authority under this rule to compromise amounts of \$37,500 or more may sign a closing agreement on behalf of the Department, after determining that the compromise action complies with these rules. The Executive Director shall have discretionary authority to delegate authority to sign closing agreements to specific employees or positions not enumerated in these rules. A delegation of authority to any employee or position which is not enumerated herein shall be in writing, signed by the Executive Director, and shall be for a specified time period of no more than 2 years. Such delegations may be renewed in writing. Copies of any such written delegations of authority shall be maintained on file with the Agency Clerk in the Office of General Counsel.~~

(3) A closing agreement signed by the taxpayer and the ~~appropriate authority within the~~ Department settles, ~~as set forth herein, shall settle~~ the taxpayer's liability for tax, interest, or penalty for the tax period specified in the agreement absent any specific provision to the contrary contained in such closing agreement. The closing agreement is ~~shall be~~ binding upon the taxpayer and the Department unless there is a showing of fraud or misrepresentation of material fact, or unless the Department is required to make an adjustment of the taxpayer's liability under Section 220.23 or 198.16, F.S. The taxpayer is ~~shall not be~~ entitled to protest or institute judicial or administrative procedures to recover any tax, interest, or penalty paid pursuant to a closing

agreement absent any specific provision to the contrary contained in such closing agreement.

(4) No change.

~~(5) Form DR 812, Closing Agreement, dated May 1994, is hereby adopted by reference as the form used by the Department of Revenue for the purposes of this rule. A copy of this form is available, without cost, by one or more of the following methods: 1) writing the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112; or, 2) faxing the Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax on Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671; or, 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (www.myflorida.com/dor). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.~~

Rulemaking Authority 212.07(9)(c), 213.06(1), 213.21(5), (9) FS. Law Implemented 212.07(9), 212.12(14) ~~420.55(1)(a)4.~~, 213.05, 213.21, 213.24(3), 215.34(2) FS. History—New 5-23-89, Amended 8-10-92, 5-18-94, 10-24-96, 10-2-01, 4-26-10, _____.

12-13.010 Special Provisions Applicable to Compromise of Estate Taxes.

(1) Pursuant to Section 213.21(2)(b), F.S., the Executive Director is granted authority to compromise and settle the amount of taxes arising as a result of Chapter 198, F.S.; Section 213.21(3), F.S., authorizes the Department to compromise or settle tax, penalty, or interest in any amount. ~~If a case involves a billing or assessment issued by or referred to the Taxpayer Services Process, authority to compromise and settle is delegated as set forth in subsection 12-13.004(4),~~

~~F.A.C., for collection cases. If a case is protested, authority to compromise and settle is delegated as set forth in subsection 12-13.004(3), F.A.C. If a case is in litigation, authority to compromise and settle is delegated as set forth in subsection 12-13.004(2), F.A.C.~~

(2) through (3) No change.

Rulemaking Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History—
New 8-10-92, Amended 5-18-94, 10-2-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-7610.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULES: [To be determined.]

DATE PROPOSED RULES APPROVED BY AGENCY HEAD: [To be determined.]

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on July 20, 2012 (Vol. 38, No. 29, pp. 2891 - 2893), to advise the public of the proposed changes to Rule Chapter 12-13, F.A.C. (Compromise and Settlement), and to provide that, if requested in writing, a rule development workshop would be held on August 8, 2012. No request was received by the Department. No written comments were received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-16, FLORIDA ADMINISTRATIVE CODE
CONSENT AGREEMENTS
AMENDING RULE 12-16.004

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12-16.004, F.A.C. (Delegation of Authority), provide that: (1) the Executive Director of the Department is authorized to issue a delegation of authority to designate those positions authorized to enter into consent agreements with a taxpayer; and (2) such delegations will be in writing, signed by the Executive Director, and maintained by the agency clerk in the Office of the General Counsel.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Section 213.23, F.S., authorizes the Executive Director of the Department to designate positions within the Department that may enter into a consent agreement with a taxpayer to extend the period during which an assessment may be issued or a claim for refund may be filed. The proposed amendments to Rule 12-16.004, F.A.C. (Delegation of Authority), are necessary to provide how the Executive Director of the Department will designate those authorized positions.

FEDERAL COMPARISON STATEMENT

The provisions contained in this rule do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

AUGUST 8, 2012

A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on July 20, 2012 (Vol. 38, No. 29, p. 2893), to advise the public of the proposed amendment to Rule 12-16.004, F.A.C. (Delegation of Authority), and to provide that, if requested in writing, a rule development workshop would be held on August 8, 2012. No request was received by the Department. No written comments were received by the Department.

After further review of provisions regarding delegations of authority issued by the Executive Director of the Department, the proposed amendments to Rule 12-16.004, F.A.C. (Delegation of Authority) were revised to provide that the Executive Director of the Department is authorized to issue a delegation of authority to designate those positions authorized to enter into consent agreements with taxpayers and that any such delegation will be in writing, signed by the Executive Director, and maintained by the agency clerk in the Office of the General Counsel.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

CONSENT AGREEMENTS

RULE NO: RULE TITLE:

12-16.004 Delegation of Authority

PURPOSE AND EFFECT: Section 213.23, F.S., authorizes the Executive Director of the Department to designate positions within the Department that may enter into consent agreements with a taxpayer to extend the period during which an assessment may be issued or a claim for refund may be filed. The purpose of the proposed amendments to Rule 12-16.004, F.A.C. (Delegation of Authority), is to provide how the Executive Director of the Department will designate those authorized positions.

SUMMARY: The proposed amendments to Rule 12-16.004, F.A.C. (Delegation of Authority), provide that: (1) the Executive Director of the Department is authorized to issue a delegation of authority to designate those positions authorized to enter into consent agreements with a taxpayer; and (2) such delegations will be in writing, signed by the Executive Director, and maintained by the agency clerk in the Office of the General Counsel.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND

LEGISLATIVE RATIFICATION: The Agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A Statement of Estimated Regulatory Cost has not been prepared by the agency. The Agency has determined that the proposed rule is not expected to require legislative ratification based on the Statement of Estimated Regulatory Cost or if no Statement of Estimated Regulatory Cost is

required, the information expressly relied upon and described herein: 1) no requirement for the Statement of Economic Regulatory Costs (SERC) was triggered under Section 120.541(1), F.S.; and 2) based on past experiences with the delegation of authority granted by the Executive Director of the Department as provided by law and rules of this nature, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S. Any person who wishes to provide information regarding a Statement of Estimated Regulatory Costs, or provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 213.06(1) FS.

LAW IMPLEMENTED: 213.23 FS.

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: [To be determined.]

PLACE: [To be determined.]

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850) 617-8347. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800) 955-8770 (Voice) and (800) 955-8771 (TTY).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-7610.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-16, FLORIDA ADMINISTRATIVE CODE
CONSENT AGREEMENTS
AMENDING RULE 12-16.004

12-16.004 Delegation of Authority.

(1) In addition to the statutory authority granted by Section 213.23, F.S., the Executive Director of the Department has authority to enter into consent agreements or extensions of consent agreements with taxpayers under authority granted by the Governor and Cabinet acting as the head of the Department. Cross Reference: Rule 12-3.007, F.A.C.

(2) The Executive Director of the Department is authorized to issue a delegation of ~~hereby delegates~~ authority setting forth those positions authorized to enter into consent agreements and extensions of consent agreements with taxpayers under Section 213.23, F.S. Any such delegation, ~~to the following designated positions in the Department:~~

~~(a) The Deputy Executive Director, the General Counsel, the Deputy General Counsel, and the Assistant General Counsels.~~

~~(b) Within Technical Assistance and Dispute Resolution:~~

- ~~1. The Director and Deputy Director of Technical Assistance and Dispute Resolution; and~~
- ~~2. All Revenue Program Administrators, Senior Attorneys, Attorneys, Tax Law Specialists, and Senior Tax Specialists in Technical Assistance and Dispute Resolution;~~

~~(c) Within the General Tax Administration Program:~~

- ~~1. Director's Office — The Program Director, Deputy Program Director, Regional~~

~~Managers, Service Center Managers, Senior Revenue Consultants, Tax Audit Supervisors, Revenue Administrators, Senior Tax Specialists, Tax Auditors, Tax Specialists, and Revenue Specialists.~~

~~2. Compliance Support Process—The Process Manager, Revenue Program, Tax Law Specialists, Senior Tax Specialists.~~

~~3. Taxpayer Services Process—The Process Manager, Revenue Program Administrators, Revenue Administrators, Tax Specialist Administrators, Revenue Managers, and Revenue Specialists.~~

~~4. Refunds and Distribution Process—The Process Manager.~~

~~5. When the Executive Director delegates authority to enter into consent agreements to specific employees or positions that are not provided in this rule, the delegation of authority will be in writing, signed by the Executive Director, and will be for a specified time period. The renewal of such delegations will also be in writing, signed by the Executive Director. Copies of written delegations of authority are maintained on file with the agency clerk in the Office of General Counsel.~~

Rulemaking Authority 213.06(1) FS. Law Implemented 213.23 FS. History—New 12-28-88, Amended 3-16-93, 12-2-03, 9-13-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet Young, Tax Law Specialist,
Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443,
Tallahassee, Florida 32314-7443, telephone (850) 717-7610.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: [To be determined.]

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: [To be determined.]

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on July 20, 2012 (Vol. 38, No. 29, p. 2893), to advise the public of the proposed amendment to Rule 12-16.004, F.A.C. (Delegation of Authority), and to provide that, if requested in writing, a rule development workshop would be held on August 8, 2012. No request was received by the Department. No written comments were received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-12, FLORIDA ADMINISTRATIVE CODE
SOLID WASTE FEES
AMENDING RULES 12A-12.001 AND 12A-12.0011

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12A-12.001, F.A.C. (New Tire Fee): (1) reorganize the rule to improve readability and simplify provisions regarding the new tire fee imposed by Section 403.718, F.S.; (2) clarify that the fee is applicable when a new motor vehicle tire is sold to a governmental entity or a tax-exempt entity; (3) clarify the term "motor vehicle" for purposes of the fee, providing examples of various types of vehicles and whether the tires sold for use on such vehicles are subject to the fee; (4) provide that tires used on racing vehicles that are not operated on Florida highways are not subject to the new tire fee; (5) revise the suggested exemption certificate used to purchase tires for vehicles that are not subject to the fee; and (6) put dealers on notice of the requirement to maintain the exemption certificates in their records.

The proposed amendments to Rule 12A-12.0011, F.A.C. (Battery Fee): (1) reorganize the rule to improve readability and simplify provisions regarding the lead-acid battery fee imposed by Section 403.7185, F.S.; (2) clarify that the fee is applicable when a battery is sold to a governmental entity or a tax-exempt entity; (3) adopt the revised provisions of Rule 12A-12.001, F.A.C., regarding the definition of "motor vehicle" for purposes of the fee; and (4) clarify the definition of a "new" lead-acid battery and a "remanufactured" lead-acid battery for purposes of the fee.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

The proposed amendments to Rule 12A-12.001, F.A.C. (New Tire Fee), and Rule 12A-12.0011, F.A.C. (Battery Fee), clarify the application of the new tire fee and the battery fee imposed by Sections 403.718 and 403.7185, F.S., and reorganize the rules to improve readability and simplify provisions regarding the fees.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

AUGUST 8, 2012

A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on July 20, 2012 (Vol. 38, No. 29, pp. 2902 - 2903), to advise the public of the proposed amendments to Rule 12A-12.001, F.A.C. (New Tire Fee), and Rule 12A-12.0011, F.A.C. (Battery Fee), and to provide that, if requested in writing, a rule development workshop would be held on August 8, 2012. No request was received by the Department. No written comments were received by the Department.

Additional provisions were added to clarify that the new tire fee and the battery fee are imposed by Sections 403.718 and 403.7185, F.S.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

SOLID WASTE FEES

RULE NO: RULE TITLE:

12A-12.001 New Tire Fee

12A-12.0011 Battery Fee

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-12.001, F.A.C. (New Tire Fee), and Rule 12A-12.0011, F.A.C. (Battery Fee), is to clarify the application of the new tire fee and the battery fee imposed by Sections 403.718 and 403.7185, F.S., and reorganize the rules to improve readability and simplify provisions regarding the fees.

SUMMARY: The proposed amendments to Rule 12A-12.001, F.A.C. (New Tire Fee): (1) reorganize the rule to improve readability and simplify provisions regarding the new tire fee imposed by Section 403.718, F.S.; (2) clarify that the fee is applicable when a new motor vehicle tire is sold to a governmental entity or a tax-exempt entity; (3) clarify the term "motor vehicle," for purposes of the fee, providing examples of various types of vehicles and whether the tires sold for use on such vehicles are subject to the fee; (4) provide that tires used on racing vehicles that are not operated on Florida highways are not subject to the new tire fee; (5) revise the suggested exemption certificate used to purchase tires for vehicles that are not subject to the fee; and (6) put dealers on notice of the requirement to maintain the exemption certificates in their records.

The proposed amendments to Rule 12A-12.0011, F.A.C. (Battery Fee): (1) reorganize the rule to improve readability and simplify provisions regarding the lead-acid battery fee; (2) clarify that the fee imposed by Section 403.7185, F.S., is applicable when a battery is sold to a

governmental entity or a tax-exempt entity; (3) adopt the revised provisions of Rule 12A-12.001, F.A.C., regarding the definition of “motor vehicle” for purposes of the fee; and (4) clarify the definition of a “new” lead-acid battery and a “remanufactured” lead-acid battery for purposes of the fee.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND

LEGISLATIVE RATIFICATION: The Agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A Statement of Estimated Regulatory Cost has not been prepared by the agency. The Agency has determined that the proposed rule is not expected to require legislative ratification based on the Statement of Estimated Regulatory Cost or if no Statement of Estimated Regulatory Cost is required, the information expressly relied upon and described herein: 1) no requirement for the Statement of Economic Regulatory Costs (SERC) was triggered under Section 120.541(1), F.S.; and 2) based on past experiences with activities for providing the public with information and rules on the imposition of statutorily imposed fees, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S. Any person who wishes to provide information regarding a Statement of Estimated Regulatory Costs, or provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 212.07(1)(b), 212.17(1)(a), (6), 212.18(2), 213.06(1), 403.718(3)(b), 403.7185(3)(b) FS.

LAW IMPLEMENTED: 212.07(1)(b), 212.12, 212.17(1)(a), 403.717, 403.718, 403.7185 FS.

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: [To be determined.]

PLACE: [To be determined.]

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850) 617-8347. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800) 955-8770 (Voice) and (800) 955-8771 (TTY).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Alan Fulton, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-6735.

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-12, FLORIDA ADMINISTRATIVE CODE
SOLID WASTE FEES
AMENDING RULES 12A-12.001 AND 12A-12.0011

12A-12.001 New Tire Fee.

(1)(a) Section 403.718, F.S., imposes ~~For the privilege of engaging in business,~~ a fee for ~~each new motor vehicle tire sold at retail in this state is imposed at the rate of 50 cents for each new tire sold during 1989 and~~ at the rate of \$1 for each new motor vehicle tire sold at retail in this state during 1990 and subsequent years.

(b)(2) The fee is imposed upon the dealer selling the new motor vehicle tire and not upon the purchaser.

(c) The fee is applicable even when the sale of a new motor vehicle tire is to any governmental agency or any organization that holds a Florida Consumer's Certificate of Exemption.

(d)(3) The fee is required to be stated separately on the sales invoice or other tangible evidence of sale given to the purchaser.

(e)(4) No change.

(2)(5) For purposes of this rule:

(a) ~~“Tire” means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle.~~

~~(b) “Vehicle” means a mechanism or device in, upon, or by which a person or property is or may be transported.~~

~~(a)(e) “Motor vehicle” means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated in this state, used to transport persons or property, and propelled by power other than muscular power. Any vehicle that has been designed for the primary purpose of carrying multiple passengers in addition to a driver or operator is considered as being used to transport persons. Any vehicle that has been designed for the primary purpose of carrying freight, baggage, or bulk materials or bulk liquids is considered as being used to transport property. The term specifically includes such off road vehicles as golf carts, all-terrain vehicles, race cars, and goats. The term does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles, mopeds, farm tractors and farm trailers, or vehicles that are not intended to transport persons or property. For example, a riding mower is not a motor vehicle since its purpose is to mow, not to serve as a means of transportation. However, a vehicle which is used exclusively in an airport to transport passengers from one gate to another serves as a means of transportation and is considered to be a motor vehicle.~~

1. The term motor vehicle also includes:

- a. All-terrain vehicles or ATVs, as defined by Section 317.0003, F.S.
- b. Golf carts, as defined by Section 320.01, F.S.
- c. Trucks defined as “goats” by Section 320.08, F.S.
- d. Utility vehicles, as defined by Section 320.01, F.S.

2. The term motor vehicle specifically does not include:

- a. Bicycles.

b. Electric personal assistive mobility devices, commonly known as Segways, as defined by Section 316.003(83), F.S.

c. Farm tractors, as provided by Section 320.51, F.S.

d. Farm trailers, as provided by Section 320.51, F.S.

e. Forklift trucks, motorized pallet trucks, or other similar industrial equipment used in warehouse or supply yard operations.

f. Mopeds, as defined by Section 320.01, F.S.

g. Racing vehicles that run exclusively at a “closed-course motorsport facility,” as defined by Section 549.09, F.S., or at a “motorsports entertainment complex,” as defined by Section 549.10, F.S.

h. Special mobile equipment, as defined by Section 316.003(48), F.S., such as traction engines, road rollers, motor graders, haulers, backhoes, wheel loaders, or other similar heavy-duty vehicles requiring specialized off-the-road tires or continuous tracks.

i. Vehicles that are designed with the specific primary purpose of performing work and are not intended to transport persons or property, such as aircraft pushback tractors or riding mowers, regardless of the fact that an operator or materials are also being carried during the performance of the work.

j. Wheelchairs, including powered models.

(b)(4) “New tire” or “new motor vehicle tire” is one that has never been used in the movement of a motor vehicle, regardless of the time that has elapsed since the tire ~~it~~ was manufactured, offered for sale, sold, or the time during which it was used as a spare tire. A tire is not “new” for purposes of this rule if it has been so used, including a tire that has been used but has been recapped or retreaded. The terms include the original retail sale of a spare tire as a

component part of a new motor vehicle.

~~(c)~~(e) The term “sales tax resale certificate” ~~or “certificate”~~ means an Annual Resale Certificate (~~form DR-13~~) issued by a dealer to make tax exempt purchases for the purposes of resale, as provided in Rule 12A-1.039, F.A.C.

(d) “Tire” means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle.

~~(f) The terms “sold at retail” and “retail sales” include the sale of a new motor vehicle tire as a separate item or the sale of the tire as a component part of a new or used motor vehicle that is sold at retail. However, they do not include the sale of new motor vehicle tires to a person solely for the purpose of resale, as provided in subsection (6).~~

~~1. Example: A tire retailer sells a new tire to a customer to put onto his motor vehicle. Since this is a retail sale of the new tire, the retailer is required to separately state the fee on the customer’s invoice and to pay the fee on this sale.~~

~~2. Example: A motor vehicle dealer sells at retail a new or used motor vehicle on which there are four new tires. This retail sale of the vehicle is, for purposes of the fee, a retail sale of the new tires that are a component part of the vehicle. The motor vehicle dealer is required to separately state the fee on the customer’s invoice and to pay the fee on this sale.~~

~~(g) A sale of a new tire is “in this state” and, thus, is subject to the fee if the sale is “in this state” for sales tax purposes, including a sale that is a “mail order sale”, as defined in Section 212.0596(1), F.S.~~

~~(h) The term “sale” means and includes any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of a new tire for a consideration.~~

(3)(a) The new tire fee imposed by Section 403.718, F.S., applies to retail sales of new motor vehicle tires, whether sold separately or as a component part of a new or used motor vehicle sold at retail in Florida.

(b) Retail sales of new motor vehicles are subject to the fee.

(c) Retail sales of used motor vehicles are considered as having been made with used tires and are not subject to the fee unless the sales invoice indicates that a new tire or tires have been installed by the dealer prior to sale.

~~(6)(a)1. The sale of a new motor vehicle tire to a person solely for the purpose of resale is not a “retail sale”, as defined in paragraph (5)(e), provided the subsequent retail sale in this state is subject to the fee and the seller shall have taken from the purchaser a certificate to the effect that the tire was purchased for resale.~~

~~2. Example: Motor vehicle dealer A purchases four new tires and puts them onto a used vehicle to be sold. No fee is payable by the seller of the tires if the seller takes a sales tax resale certificate from Dealer A. Thereafter, Dealer A sells the vehicle, onto which the new tires were put, to motor vehicle Dealer B. No fee is payable by Dealer A if it takes a sales tax resale certificate from Dealer B. Dealer A should clearly indicate on the invoice to Dealer B that there are four new tires on the vehicle on which the fee has not been paid. When Dealer B sells the vehicle at retail, Dealer B must separately state the fee on the invoice to the purchaser and pay the fee.~~

(4)(a)(b) A motor vehicle dealer can purchase one or more tires exempt from the fee as a sale for resale by presenting a sales tax resale certificate to the seller of the tires. ~~If~~ However, if thereafter the motor vehicle dealer subsequently withdraws any such tire from inventory to use on the dealer’s own vehicle, to give away, or for any purpose except for resale, the motor vehicle

dealer will owe the fee at the time the tire is withdrawn from inventory. If the motor vehicle dealer sells the tire at retail, whether separately or installed on a motor vehicle, that sale will be subject to the fee. If the motor vehicle dealer resells sells the tire to a dealer purchaser who presents a sales tax resale certificate, no fee will be due on that transaction.

~~(b)(c) Motor vehicle~~ Notwithstanding paragraphs (6)(a) and (b) above, used car dealers that exclusively sell used motor vehicles may elect to pay the fee to the tire wholesaler on the purchase of tires instead in lieu of purchasing tires exempt from the tire fee. If the used motor vehicle ~~used car~~ dealer elects to do so, the ~~used car~~ dealer must pay the tire fee to the tire wholesaler on all its purchases of tires. ~~The used car dealer must indicate on the sales tax resale certificate issued to the tire wholesaler that the certificate is to be used to exempt the purchases of tires from sales tax only and not from the tire fee.~~ For the purpose of the tire fee only, the wholesale tire dealer is to treat the sale as a retail sale and must separately state the tire fee on the sales invoice to the used motor vehicle ~~used car~~ dealer. On subsequent retail sales by the used motor vehicle ~~used car~~ dealer, the ~~used car~~ dealer must state in the contract or on the sales invoice to the purchaser that the applicable tire fee has been previously paid ~~to the state on the tires sold, whether sold separately or as a component part of a motor vehicle.~~

~~(5)(d)~~ A sale to a motor vehicle leasing company of a new motor vehicle tire or a vehicle of which a new motor vehicle tire is a component part is not a retail sale for purposes of the fee when if the leasing company gives the seller a sales tax resale certificate. Instead, the fee is payable by the leasing company when it first puts the vehicle into use in this state.

~~(6)(7)~~ No Change.

~~(7)(a)(8)~~ When there is a sale of a new tire that can either be used on a “motor vehicle,” ~~as that term is defined in paragraph (5)(c),~~ or on a farm tractor, farm trailer, or other equipment

that is specifically excluded from that definition, it will be presumed to be purchased for use on a “motor vehicle” unless the purchaser gives to the seller at the time of purchase a certificate to the effect that the new tire will be used on a farm tractor, farm trailer, or other equipment that is specifically excluded from that definition. The exemption certificate must be retained by the selling dealer until the fee imposed under Section 403.718, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

(b) The following is a suggested exemption certificate to be completed by a purchaser and presented to the seller ~~and to be retained in the seller’s records as evidence that the tire or tires purchased were not for use on a “motor vehicle”, and that, therefore, no fee on the transaction was due by the seller:~~

EXEMPTION CERTIFICATE

TIRE FEE

The undersigned hereby certifies that the new tire(s) listed on the attached sales invoice or purchase order will be used exclusively on the following type of vehicle or equipment, which is excluded from the definition of “motor vehicle,” as provided by Rule 12A-12.001(2)(a), Florida

Administrative Code:

_____ Farm tractor

_____ Farm trailer

_____ Other (specify) _____

I understand that if I fraudulently issue this certificate to evade the payment of the fee imposed on a new tire I will be liable for payment of the fee, plus a penalty of 200% of the fee, and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Exemption Certificate and the facts stated in it are true.

Purchaser's Name _____

By (Purchaser's Signature) _____

Date _____

Rulemaking Specific Authority 212.07(1)(b), 212.17(6), 212.18(2), 213.06(1), 403.718(3)(b) FS.

Law Implemented 212.07(1)(b), 212.12, 212.17(1)(a), 403.717, 403.718 FS. History- New 1-2-89, Amended 10-16-89, 12-16-91, 3-20-96, 6-19-01, _____.

12A-12.0011 Battery Fee.

(1)(a) Section 403.7185, F.S., imposes ~~For the privilege of engaging in business,~~ a fee at the rate of \$1.50 for each new or remanufactured lead-acid ~~legalized~~ battery sold at retail in this state ~~is imposed on each person engaging in the business of making retail sales of lead-acid batteries within this state.~~

~~(b) The fee is payable one time only on the sale of a new or remanufactured battery.~~

~~(c) The fee is payable if the new or remanufactured battery is sold as a component part of a motor vehicle, vessel, or aircraft or other property.~~

~~(d) Notwithstanding paragraphs (a) and (b), the fee is not payable if the battery is sold to recycle components.~~

(b)(2) The fee is imposed upon the dealer selling the new or remanufactured lead-acid battery and not upon the purchaser.

(c) The fee is applicable even when the sale of a new or remanufactured lead-acid battery is to any governmental agency or any organization that holds a Florida Consumer's Certificate of Exemption.

~~(3) While the fee is payable on the retail sale of a new or remanufactured battery only if the battery, as defined in paragraph (a) of subsection (6), is designed for use in motor vehicles, vessels, and aircraft, the fee is payable even if a battery so designed is purchased for use on other machinery or equipment or when sold at retail as a component part of other machinery or equipment.~~

~~(d)(4) The dealer is not required may choose whether to state the fee separately on the invoice to the purchaser. However, if the fee is separately stated on the invoice, the fee must be included in the price upon which any tax imposed by Chapter 212, F.S., is computed, whether or not the additional cost is passed on to the purchaser; and the dealer may choose whether to absorb all or part of the fee and whether to advertise or hold out to the public that it is doing so.~~

~~(5) The fee is to be included in the price upon which sales or use tax or any other tax imposed by Part I of Chapter 212, F.S., is computed, even though the fee may be listed as a separate item on the invoice.~~

~~(2)(6) For purposes of this rule:~~

~~(a) A "lead-acid battery" is a starting, marine, or deep-cycle battery storage or secondary battery containing lead plates that will function as a battery when the electrolyte is added, and that is designed for use in motor vehicles, vessels, and aircraft.~~

~~(b) "Motor vehicle" means motor vehicles as provided in Rule 12A-12.001, F.A.C. an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated in this state, used to transport persons or property, and propelled by~~

~~power other than muscular power. The term specifically includes such off road vehicles as golf carts, all terrain vehicles, race cars, and goats. The term does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles, mopeds, farm tractors and farm trailers, or vehicles that are not intended to transport persons or property. For example, a riding mower is not a motor vehicle since its purpose is to mow, not to serve as a means of transportation. However, a vehicle which is used exclusively in an airport to transport passengers from one gate to another serves as a means of transportation and is considered to be a motor vehicle.~~

(c) A “new” lead-acid battery is one that has never been used in the operation of a motor vehicle, vessel, or aircraft, regardless of the time that has elapsed since the battery was manufactured. ~~The term “resale certificate” or “sales tax resale certificate” means an Annual Resale Certificate (form DR 13) issued by a dealer to make tax exempt purchases for the purposes of resale.~~

(d) A “remanufactured” lead-acid battery is one that has gone through an industrial process including the removal of sulfation to restore the battery’s original electrical capacity. A remanufactured battery is not a used battery that has only been recharged. ~~The term “sale” means and includes any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of a lead acid battery for a consideration.~~

(e) The term “resale certificate” or “sales tax resale certificate” means an Annual Resale Certificate issued by a dealer to make tax exempt purchases for the purposes of resale, as provided in Rule 12A-1.039, F.A.C. ~~The term “sold at retail” includes the sale of a new or remanufactured lead acid battery as a separate item or as a component part of a vehicle, vessel, aircraft, or other machinery or equipment that contains a battery designed for use in a motor~~

vehicle, vessel, or aircraft. The term “sold at retail” does not include the sale of a lead acid battery to a person solely for the purpose of resale, as provided in subsection (7), or the sale of a lead acid battery for the purpose of recycling its component parts.

1. Example: A battery retailer sells a lead acid battery to a customer to put into his motor vehicle. Since this is a retail sale of the battery, the retailer is required to pay the fee on this sale.

2. Example: A motor vehicle dealer imports into this state a new motor vehicle in which there is a lead acid battery already installed. The battery fee must be paid by the dealer when the dealer sells the new vehicle at retail.

3. Example: Lead acid batteries are sold to a dealer who gives the seller a resale certificate as proof that the batteries are purchased for resale. This sale of the batteries to the dealer is not, for purposes of the fee, a retail sale of the batteries.

4. Example: A lead acid battery that is designed for use in a motor vehicle, vessel, or aircraft is sold to a father to put into his child’s toy which uses a car battery. The fee is payable by the retailer, since the battery is so designed, even though it was purchased for another use.

5. Example: A new or remanufactured lead acid battery that is designed for use in an automobile is sold to a farmer to put into a farm tractor or other machinery that is not a “motor vehicle”. The fee is payable by the retailer, since the battery is designed for use in a “motor vehicle”, even though it was purchased for use in machinery that is not within that definition.

(f) A retail sale of a new or remanufactured lead acid battery is “in this state” and, thus, is subject to the fee, if the sale is “in this state” for sales tax purposes, including a sale that is a “mail order sale,” as defined in Section 212.0596(1), F.S.

(3)(a) Section 403.7185, F.S., imposes a fee on retail sales of new or remanufactured lead-acid batteries, whether sold separately or as a component part of a motor vehicle, vessel, or aircraft.

(b) Retail sales of new motor vehicles, vessels, or aircraft are subject to the fee.

(c) Retail sales of used motor vehicles, vessels, or aircraft are considered as having been made with a used battery and are not subject to the fee, unless the sales invoice indicates that a new or remanufactured battery has been installed by the dealer prior to sale.

(4)(a) The fee imposed by Section 403.7185, F.S., is applicable to retail sales of lead-acid batteries, even if that battery is purchased for other uses.

(b) Example: A person goes to an auto parts store and purchases an automobile battery for use with an emergency electrical generator. The fee is imposed on the sale of the battery since it was designed for use in a motor vehicle.

(c) Example: A rural farm supply store does not have the exact model and size battery recommended by the manufacturer for a farmer's tractor. However, the farm supply store does have an automobile battery that will be able to start the farmer's tractor. The fee is imposed on the sale of the battery, even though it will be installed in a vehicle that is not defined as a motor vehicle.

~~(5)(7)(a) The sale of a new or remanufactured lead-acid battery to a dealer person solely for the purpose of resale is not subject to the fee imposed by Section 403.718 F.S. a "sale at retail," as defined in paragraph (6)(d), provided the seller shall have taken from the purchaser a sales tax resale certificate to the effect that the battery was purchased for resale. A resale certificate given to the seller for sales tax purposes will also be sufficient evidence that the sale was not a retail sale for purposes of the fee.~~

(b)1. If a dealer purchases a new or remanufactured battery for resale, and later withdraws the battery from inventory to use in the dealer's own motor vehicle, vessel, aircraft, machinery, or other equipment; to give away; or for any purpose other than for resale, that dealer will owe the fee at the time the battery is withdrawn from inventory.

2. Example: Motor vehicle Dealer A purchases a new or remanufactured lead-acid battery for installation to install in a used vehicle ~~to be sold~~. No fee is payable by the battery seller, when if the seller takes from Dealer A extends a sales tax resale certificate. ~~When Dealer A will not owe the fee when takes the battery is installed out of inventory to put~~ into the vehicle that is to be sold, ~~that dealer will not owe the fee at that time~~, but the dealer will owe the fee, when the vehicle is sold at retail. However, if Dealer A sells the vehicle, in which the battery has been installed, to motor vehicle Dealer B to sell ~~it~~ at retail, the fee will not be payable by Dealer A, when if he takes from Dealer B extends a resale certificate. ~~The, but the~~ fee will be payable by Dealer B, when that dealer if he subsequently sells the vehicle it at retail.

(c) Dealers that exclusively sell used motor vehicles, used vessels, or used aircraft may elect to pay the battery fee to the battery wholesaler on the purchase of batteries instead of purchasing batteries exempt from the fee. If the dealer elects to do so, the dealer must pay the fee to the battery wholesaler on all its purchases of batteries. The motor vehicle, vessel, or aircraft dealer is not required to indicate on the sales invoice to its retail customer that the applicable battery fee has been paid.

(6)(e) A sale to a leasing company of a new or remanufactured lead-acid battery, or motor vehicle, vessel, or aircraft in or vehicle or machinery of which the lead-acid battery is a component part, is not a retail sale ~~for purposes of the fee~~, when if the leasing company

~~purchaser~~ gives the seller a sales tax resale certificate. Instead, the fee is payable by the leasing company when it first puts the motor vehicle, vessel, or aircraft into use in this state.

~~(7)(8)~~ No change.

Rulemaking Specific Authority 212.07(1)(b), 212.17(6), 212.18(2), 213.06(1), 403.7185(3)(b)

FS. Law Implemented 212.07(1)(b), 212.12, 212.17(1)(a), 403.717(1)(b), (h), 403.7185 FS.

History-New 10-16-89, Amended 12-16-91, 3-20-96, 4-2-00, 6-19-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Alan Fulton, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-6735.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULES: [To be determined.]

DATE PROPOSED RULES APPROVED BY AGENCY HEAD: [To be determined.]

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on July 20, 2012 (Vol. 38, No. 29, pp. 2902 - 2903), to advise the public of the proposed amendments to Rule 12A-12.001, F.A.C. (New Tire Fee), and Rule 12A-12.0011, F.A.C. (Battery Fee), and to provide that, if requested in writing, a rule development workshop would be held on August 8, 2012. No request was received by the Department. No written comments were received by the Department.