

STATE OF FLORIDA  
DEPARTMENT OF REVENUE  
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE  
SALES AND USE TAX  
AMENDING RULES 12A-1.007, 12A-1.012, and 12A-1.097  
REPEALING RULE 12A-1.0144

12A-1.007 Aircraft, Boats, Mobile Homes, and Motor Vehicles.

(1) through (7) No change.

(8) Motor Vehicles.

(a) 1. through 3. No change.

4. The Department prescribes Form DR-123, Affidavit for Partial Exemption of Motor Vehicle Sold to a Resident of Another State ~~for Licensing Outside Florida~~, incorporated by reference in Rule 12A-1.097, F.A.C., to be completed by the purchaser and furnished to the selling dealer or appropriate sales tax collection agency.

(b) through (m) No change.

(9) through (22) No change.

(23) Motor Vehicle Warranty Repurchases or Replacements (Lemon Law).

(a) Chapter 681, F.S., Motor Vehicle Warranty Enforcement Act, provides procedures for a consumer who may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the warranty provided in that chapter. This subsection provides for the application of Florida tax or surtax for the replacement ~~The following provisions shall apply when a manufacturer pursuant to the provisions of Section 681.104, F.S., replaces or the repurchase of the repurchases a motor vehicle:~~

~~(b)1.~~ When the manufacturer replaces the motor vehicle, as required by Section 681.104, F.S., Florida tax is due on the amount of the reasonable offset for use attributed to paid by the consumer, lienholder, or lessor to the manufacturer. The dealer is required to shall note on the sales invoice, bill of sale, or other ~~proper~~ document representing representative of the transaction that the motor vehicle is a replacement motor vehicle, as provided in Section 681.104, F.S. under provisions of Section 681.104, F.S., and shall collect the tax from the consumer on the amount of the reasonable offset for use.

~~(c)1.2.a.~~ When the manufacturer repurchases the motor vehicle, as provided in Section 681.104, F.S., the Department of Revenue shall refund to the manufacturer any Florida sales tax that the manufacturer must refund the full purchase price, including the tax paid, less a reasonable offset for use, refunded to the consumer, lienholder, or lessor. The written agreement repurchasing the motor vehicle will contain the reasonable offset for use attributed to the consumer, lienholder, or lessor under the provisions of Section 681.104, F.S.

2. The manufacturer may seek a refund of the amount of Florida tax or surtax refunded by the manufacturer to the consumer, lienholder, or lessor. To receive the refund, the manufacturer must file a an Sales and Use Tax Application for Refund-Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), that meets the requirements of must be filed by the manufacturer. An application for refund shall not be considered complete pursuant to Section 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C., and a refund shall not be approved before the manufacturer provides the required documentation listed in Form DR-26S regarding the reimbursement of tax previously paid on a vehicle purchased in Florida by a motor vehicle manufacturer when the manufacturer agrees to replace or repurchase the vehicle.

b. Form DR-26S, Application for Refund-Sales and Use Tax, must be filed with the

~~Department for tax paid on or after October 1, 1994, and prior to July 1, 1999, within 5 years after the date the tax was paid.~~

e. ~~Form DR-26S, Application for Refund Sales and Use Tax,~~ must be filed with the Department ~~for tax paid on or after July 1, 1999,~~ within three 3 years after the date the tax was paid to the Department ~~paid.~~

d. ~~The amount of refund to the manufacturer shall be in an amount which results when the state sales tax percentage plus any county discretionary surtax is multiplied by the sum which remains when the reasonable offset for use is subtracted from the sales price of the vehicle.~~

3. The tax to be refunded to the consumer, lienholder, or lessor on a repurchased motor vehicle is calculated as follows:

a. If discretionary sales surtax was not paid: [(Sales Price – Reasonable Offset for Use) × State Tax Rate] = Amount of Florida Tax Refund.

b. If discretionary sales surtax was paid: [(Sales Price – Reasonable Offset for Use) × State Tax Rate] + [(Sales Price (not to exceed \$5,000) – Reasonable Offset for Use) × Surtax Rate] = Amount of Florida Sales Tax Refund.

4.a.(f) Example: An out-of-state consumer purchased a motor vehicle from a Florida dealer for a The total sales price of \$15,000 the vehicle less trade-in allowance is \$18,000. The consumer paid tax to Florida at his or her home state rate of 3% on the total purchase price and did not pay any discretionary sales surtax. The reasonable offset for use attributed to the consumer in the repurchase agreement is \$75. Florida tax to be refunded by the manufacturer to the consumer is calculated as [(\$15,000 - \$75) × 0.03] = \$447.75. of 2,000 miles out of projected 120,000 miles (2,000 – 18,000 divided by 120,000) equals \$300. Sales tax of 6 percent times \$17,700 (\$18,000 minus \$300) represents the amount of sales tax refunded to the manufacturer

of \$1,062.

b. Example: A Florida consumer purchased a motor vehicle from a Florida dealer for a total sales price of \$18,000. The consumer paid state tax at the rate of 6% on the total sales price, and paid discretionary sales surtax at the rate of 1% on the first \$5,000 of the sales price. The reasonable offset for use attributed to the consumer in the repurchase agreement is \$300. Florida tax to be refunded by the manufacturer to the consumer is calculated as  $[(\$18,000 - \$300) \times 0.06] + [(\$5,000 - \$300) \times 0.01] = \$1,109.$

~~(II) Example: The sales price of the vehicle is \$10,000. The reasonable offset for use of 48 miles out of projected 120,000 miles equals \$4 (48 – 10,000 divided by 120,000). Sales tax of 3 percent (sales tax rate of purchaser’s resident state) times 9,996 (\$10,000 minus \$4) equals \$299.88, which sum represents the amount of sales tax refunded to the manufacturer.~~

~~(III) Example: The sales price of the vehicle is \$8,000. The reasonable offset for use of 600 miles out of projected 120,000 miles equals \$40 (600 – 8,000 divided by 120,000). Sales tax of 7 percent (6 percent plus 1 percent county discretionary surtax) times \$5,000 (statutory limit on which county discretionary surtax is imposed) equals \$350. The remainder of the sales price of \$2,960 (\$8,000 minus \$5,000 minus \$40) times 6 percent equals \$177.60. The total of \$527.60 (\$350 plus \$177.60) represents the amount of sales tax refunded to the manufacturer.~~

(d)(b) For purposes of this subsection, the terms “manufacturer,” “motor vehicle,” and “reasonable offset for use,” and “replacement motor vehicle” are given the same meanings as defined the definitions provided in Section 681.102(13), (14), and (18), F.S.

(24) through (28) No change.

Rulemaking Authority 212.05(1), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(2), (4), (10), (14), (15), (16), (19), (20), 212.03, 212.05(1), 212.06(1), (2), (4), (5), (7),

(8), (10), (12), 212.0601, 212.07(2), (7), 212.08(5)(i), (7)(t), (aa), (ee), (10), (11), 212.12(2), (12), 213.255(1)-(2), (3), 213.35, 215.26(2), 681.102(13)-(14), (20)-(21), 681.104 FS. History— Revised 10-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, 8-18-73, 12-11-74, 6-9-76, Amended 2-21-77, 5-10-77, 9-26-77, 9-28-78, 3-16-80, 12-31-81, 7-20-82, 10-13-83, Formerly 12A-1.07, Amended 1-2-89, 12-11-89, 3-17-93, 10-17-94, 3-20-96, 4-2-00, 6-19-01, 8-1-02, 4-17-03, ~~4-17-03~~ 9-28-04, \_\_\_\_\_.

12A-1.012 Repossessed Merchandise and Bad Debts.

~~(1) The full amount of tax on credit sales, installment sales, or sales made on any kind of deferred payment plan, shall be due at the moment of the transaction in the same manner as a cash sale.~~

~~(1)(2)~~ Repossessions:

(a) The repossession of tangible personal property by the seller or the lienholder is not subject to tax.

(b) The redemption of repossessed tangible personal property by the debtor prior to the sale of the repossessed property is not subject to tax.

(c) The subsequent sale of repossessed tangible personal property is subject to tax.

~~(d)(a)~~ A dealer who collected and remitted ~~has paid~~ sales tax to the Department ~~in full~~ on the selling price of tangible personal property sold under a retail installment, title loan, retain title, conditional sale, or similar contract in which the dealer retains a security interest in the property may, upon repossession of the property ~~(with or without judicial process)~~, take credit on a subsequent tax return for, or obtain a refund of, that portion of the tax that is applicable to the unpaid balance of the contract. The credit or refund is ~~shall be~~ based on the ratio that the total tax

bears to the unpaid balance of the sales price, excluding finance or other nontaxable ~~non-taxable~~ charges, ~~as reflected in the sales contract.~~ A Refund or credit or refund must be claimed within 12 months following the month in which the property was repossessed.

~~(c)(b) Tangible personal property (excluding motor vehicles):~~ When a dealer claims a tax credit or a refund of tax paid on tangible personal property sold and repossessed, the dealer by him, he must complete a in detail Form DR-95A, Schedule of Florida Sales or Use Tax Credits Claimed on Repossessed Tangible Personal Property Repossessed (Form DR-95B, incorporated by reference in Rule 12A-1.097, F.A.C.), ~~and certify thereon that he was the seller of the tangible personal property described therein; that Florida sales and use tax was remitted to the Florida Department of Revenue; and that such property was repossessed by him. In those instances where the tangible personal property was financed by a third party, the dealer must show that he repurchased the contract before applying for a tax credit under this paragraph.~~

~~(c) Motor Vehicles:~~

~~(f)1. The~~ When a dealer may claim ~~claims~~ a tax credit or refund on tangible personal property, including any aircraft, boat, mobile home, a motor vehicle, or any other titled property sold by the dealer for which the dealer holds a security interest in the property under the terms of a retail installment, title loan, retain title, conditional sale, or similar contract when:

1. The dealer sold the property and remitted him, he shall complete in detail Form DR-95B, Schedule of Florida Sales or Use Tax Credits Claimed on Repossessed Motor Vehicles (incorporated by reference in Rule 12A-1.097, F.A.C.), ~~and certify thereon that he was the seller of the specifically described vehicle; that the Florida sales and use tax was remitted to the Florida Department of Revenue;~~

2. The dealer financed the property, or the property was financed by a financing

institution with recourse;

3. The property was that he subsequently repossessed upon default of the terms of the contract by the purchaser of the property vehicle; and

4. The dealer acquired and that he reacquired ownership of the repossessed property (e.g., certificate of title or other evidence establishing possession and ownership of the repossessed property) thereof and acquired certificate of title thereto after default by the purchaser.

~~Documents, such as copies of reacquired titles, shall be maintained by the dealer to support his claim for the tax credit.~~

~~(g)2. When claiming a tax credit or refund In those instances where the motor vehicle was financed by a third party, the dealer must shall complete a in detail Form DR-95B, Schedule of Florida Sales or Use Tax Credits Claimed on Repossessed Tangible Personal Property Motor Vehicles, (Form DR-95B, incorporated by reference in Rule 12A-1.097, F.A.C.). When claiming a tax credit, the completed Form DR-95B must be retained with the dealer's applicable sales and use tax return. When claiming a tax refund, a Sales and Use Tax Application for Refund (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), the completed Form DR-95B, and the information and documentation required to be included with Form DR-26S must be filed with the Department. and certify thereon that he was the seller of the specifically described vehicle; that the Florida sales and use tax was remitted to the Florida Department of Revenue; that he repurchased the contract; and that he received a repossession title on each vehicle from the lender. (Repossession title, as used herein, means a title acquired by the lien holder lender from the Division of Motor Vehicles, Department of Highway Safety and Motor Vehicles, and assigned by the lender to the dealer.) Documents, such as copies of repossession titles and checks to repurchase contracts, shall be maintained by the dealer to support the claim for tax credit.~~

~~(d) The information required on Forms DR-95A, Schedule of Florida Sales or Use Tax Credits Claimed on Tangible Personal Property Repossessed, and Form DR-95B, Schedule of Florida Sales or Use Tax Credits Claimed on Repossessed Motor Vehicles, shall include the following:~~

- ~~1. Customer's name;~~
- ~~2. Description of tangible personal property or motor vehicle identification;~~
- ~~3. Date tax remitted to Department by seller;~~
- ~~4. Amount of tax paid;~~
- ~~5. Sales price, less trade-in, less cash discount;~~
- ~~6. Sales price, less trade-in, less cash down;~~
- ~~7. Term of contract;~~
- ~~8. Amount of each monthly payment, excluding finance charges (item 6 divided by item 7);~~
- ~~9. Amount of sales tax included in each monthly payment (multiply amount in item 8 by the tax rate);~~
- ~~10. Number of unpaid installments at time of repossession by seller;~~
- ~~11. Tax credit due (multiply item 9 by item 10, less the collection allowance taken at the time the tax was originally paid to the state);~~
- ~~12. Date of repossession.~~

(h)(e) Dealers must retain documentation required to establish the right to a credit or refund, including the retail installment, title loan, retain title, conditional sale, or similar contract, and documents establishing ownership or title to the property after repossession. The records required in this subsection must be maintained by the dealer until tax imposed by Chapter 212,



F.S., may no longer be determined and assessed under Section 95.091(3), F.S., and must ~~shall~~ be made available to the Department upon request.

(3) No change.

~~(4) The sale of repossessed merchandise is taxable.~~

~~(5) If a dealer is reimbursed by a common carrier for damage to merchandise on which he has previously paid tax, the dealer is entitled to a refund of such tax on the amount reimbursed. For example: The dealer paid his supplier \$500 for merchandise and remitted \$30 tax thereon to the state. Later, he was reimbursed \$100 by the carrier to cover damages to the goods. The dealer is entitled to a refund of \$6 overpayment of tax. If the carrier also reimburses the dealer for tax he has paid, then the dealer is not entitled to a tax refund.~~

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.06(1), 212.13(2), 212.17(1), (2), (3), 212.18(2), 213.35, 215.26 FS. History—Revised 10-7-68, Amended 1-17-71, Revised 6-16-72, Amended 2-21-77, 9-28-78, 7-20-82, Formerly 12A-1.12, Amended 12-13-88, 2-16-93,\_\_\_\_\_.

12A-1.0144 Refund of Tax Paid on Purchases of Equipment, Machinery, and Other Materials for Renewable Energy Technologies.

~~(1) Who May Claim the Refund. Any applicant who has obtained a written certification issued by the Department of Agriculture and Consumer Services is eligible for a refund. The refund is based on Florida sales and use taxes previously paid on:~~

~~(a) Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E100), and other renewable fuels, including fueling infrastructure, transportation, and storage for these fuels; and,~~

~~(b) Gasoline fueling station pump retrofits for biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel distributions.~~

~~(2) Applying for the refund.~~

~~(a) To receive a refund of Florida sales and use taxes previously paid on eligible items, taxpayers must first file an application with the Department of Agriculture and Consumer Services.~~

~~(b) A Renewable Energy Technologies Sales Tax Return Application may be obtained by contacting the Office of Energy, Department of Agriculture and Consumer Services, 600 South Calhoun Street, Suite 251, Tallahassee, Florida 32399-0001, by telephone (850)617-7470, or by e-mail at Energy@FreshFromFlorida.com.~~

~~(3) Obtaining the refund.~~

~~(a) To obtain a refund of Florida sales and use tax previously paid on eligible items, the applicant must file a completed Application for Refund Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), along with a copy of the written certification, with the Department of Revenue. Form DR-26S must be filed within 6 months from the date of the written certification issued by the Department of Agriculture and Consumer Services. Form DR-26S, with a copy of the certification letter, should be mailed to:~~

~~Florida Department of Revenue~~

~~Refunds Process~~

~~P.O. Box 6490~~

~~Tallahassee, Florida 32314-6490.~~

~~(b) The amount of a refund claim is limited to the amount approved and certified by the Florida Department of Agriculture and Consumer Services.~~

~~(c) A refund will be issued within 30 days after the refund application is determined to be complete and the amount of the refund due is approved by the Department of Revenue.~~

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.08(7)(hhh), 213.255 FS. History—New 1-17-13, Repealed.

#### 12A-1.097 Public Use Forms.

(1) The following public use forms and instructions are employed by the Department in its dealings with the public related to the administration of Chapter 212, F.S. These forms are hereby incorporated by reference in this rule.

(a) through (b) No change.

Form Number	Title	Effective Date
(2)(a) DR-1	Florida Business Tax Application (R. ____ <del>4</del> /15) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-____04849">http://www.flrules.org/Gateway/reference.asp?No=Ref-____04849</a> )	<u>01/18</u> <del>01</del> /15
(b) DR-1N	Instructions for Completing the Florida Business Tax Application (Form DR-1) (R. ____ <del>4</del> /15) ( <a href="http://www.flrules.org/Gateway/reference.asp?No=Ref-____04851">http://www.flrules.org/Gateway/reference.asp?No=Ref-____04851</a> )	<u>01/18</u> <del>01</del> /15
(c)	No change	
(3) through (12)	No change.	
<del>(13)(a) DR-95A</del>	<del>Schedule of Florida Sales or Use Tax Credits Claimed on Tangible Personal Property Repossessed (R. 04/95)</del>	<del>06/01</del>

(b) DR-95B

Schedule of ~~Florida Sales or Use~~ Tax Credits

01/1806/01

Claimed on Repossessed Tangible Personal

Property Motor Vehicles (R. \_\_\_\_ ~~12/09~~)

([http://www.flrules.org/Gateway/reference.asp?No=Ref-\\_\\_](http://www.flrules.org/Gateway/reference.asp?No=Ref-__))

(14) through (19) No change.

Rulemaking Authority 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4., (n)4., (o)4., (7), 212.11(5)(b), 212.12(1)(a)2., 212.17(6), 212.18(2), (3), 212.183, 213.06(1), 288.1258(4)(c), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2), (7) FS. Law Implemented 92.525(1)(b), (3), 95.091, 119.071(5), 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 202.11(2), (3), (6), (16), (24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055, 212.06, 212.0606, 212.07(1), (8), (9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1), (4), (5), 212.12(1), (2), (9), (13), 212.13, 212.14(2), (4), (5), 212.17, 212.18(2), (3), 212.183, 213.235, 213.29, 213.37, 213.755, 215.26(2), 219.07, 288.1258, 290.00677, 376.70, 376.75, 403.717, 403.718, 403.7185, 443.036, 443.121(1), (3), 443.131, 443.1315, 443.1316, 443.171(2), (7) FS. History-New 4-12-84, Formerly 12A-1.97, Amended 8-10-92, 11-30-97, 7-1-99, 4-2-00, 6-28-00, 6-19-01, 10-2-01, 10-21-01, 8-1-02, 4-17-03, 5-4-03, 6-12-03, 10-1-03, 9-28-04, 6-28-05, 5-1-06, 4-5-07, 1-1-08, 4-1-08, 6-4-08, 1-27-09, 9-1-09, 11-3-09, 1-11-10, 4-26-10, 6-28-10, 7-12-10, 1-12-11, 1-25-12, 1-17-13, 5-9-13, 1-20-14, 1-19-15, 1-11-16, 4-5,16,\_\_\_\_\_.