

Florida State Tax Reporter, Regulation, Florida, Rule 12A-1.091, Use Tax

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SALES AND USE—RULES, Title 12A Sales and Use Tax, Chapter 12A-1 Sales and Use Tax

12A-1.091(1) The Florida Sales and Use Tax Act imposes a tax on the use, consumption, distribution, and storage for use or consumption in this state of tangible personal property purchased in such manner that the sales tax would not be applicable at the time of purchase.

12A-1.091(2)

12A-1.091(2)(a) The use tax applies to the use in this state of tangible personal property purchased outside Florida which would have been subject to the sales tax if purchased from a Florida dealer; provided, however, that it shall be presumed that tangible personal property used in other states, territories of the United States, or the District of Columbia for six (6) months or longer under conditions which would lawfully give rise to the taxing jurisdiction of another state, territory, or District of Columbia before being imported into this state was not purchased for use in this state. For purposes of the presumption set forth herein, it shall be necessary only that the tangible personal property was used under conditions which would allow such other state, territory, or District of Columbia to impose a sales or use tax on the sale or use of that property regardless of whether any such tax was actually imposed or paid.

12A-1.091(2)(b) The rental or lease of tangible personal property which is used or stored in this state shall be taxable without regard to its prior use or tax paid on purchase outside this state.

12A-1.091(3) The provisions of the Florida Sales and Use Tax shall not apply to the use or consumption, or distribution or storage of tangible personal property for use or consumption in this state upon which a like tax equal to or greater than the amount due this state has been lawfully imposed and paid in another state, territory of the United States, or the District of Columbia before use tax payable to this state would otherwise have become due. If the amount of tax so lawfully imposed and paid in another state, territory of the United States, or the District of Columbia is not equal to or greater than the amount of tax imposed by Chapter 212, F.S., then the person from whom the use tax is due shall pay to the Department of Revenue an amount sufficient to make the tax paid in the other state, territory of the United States, or the District of Columbia and in this state equal to the amount imposed by that Chapter.

12A-1.091(4) The use tax does not apply to any property of which the retail sale is specifically exempt from payment of the Florida sales tax. The two taxes, sales and use, stand as complements to each other, and taken together provide a uniform tax upon either the sale at retail or the use of all tangible personal property irrespective of where it may have been purchased.

12A-1.091(5) Every dealer who solicits business, either by direct representatives, indirect representatives or manufacturers' agents and by reason thereof receives orders for tangible personal property from consumers for use, consumption, distribution or storage for use or consumption in the state, shall collect the tax from the purchaser, and no action either in law or in equity on a sale or transaction as provided by terms of Chapter 212, F.S., may be had in this state by any such dealer unless it is affirmatively shown that the provisions of the law have been fully complied with.

12A-1.091(6) For self-accrual authorization, see [Rule 12A-1.0911](#), F.A.C.

12A-1.091(7) Under [Section 212.06\(1\)](#), F.S., use tax is imposed upon the cost of tangible personal property imported into this state for use, consumption, distribution, or storage for use or consumption in this state, after it has come to rest and has become a part of the general mass of property in this state, subject to the provisions contained in [Rule 12A-1.045](#).

12A-1.091(8) If tangible personal property is sent out of the state to be repaired and returned, the transaction is taxable. When tangible personal property is shipped into this state, repaired and shipped back to its owner in another state by common carrier or mail, the amount charged for the repair is exempt.

12A-1.091(9) If items are purchased from a sales officer in Florida and shipped direct to a Florida customer by a factory in another state, the transaction is taxable, whether the invoicing is handled by the factory or the Florida office.

12A-1.091(10) If a Florida manufacturer sells taxable merchandise to an unregistered out-of-state dealer, but delivers it to the out-of-state dealer's customer in Florida, he shall collect tax from the out-of-state dealer, who, being unregistered, is unable to furnish a resale certificate.

12A-1.091(11) Law and medical books, accounting manuals, tax service books with currently issued inserts and similar publications are taxable when purchased from out-of-state suppliers for delivery in Florida.

12A-1.091(12)

12A-1.091(12)(a) Any person who manufactures factory-built buildings out-of-state for his own use in the performance of a contract for the construction or improvement of real property in Florida shall pay tax at the time such building is imported into Florida. The tax shall only be computed on the cost price of the items used in the manufacture of the building.

12A-1.091(12)(b) For the purpose of this subsection, factory-built building means a structure manufactured in a manufacturing facility for installation or erection as a finished building; factory-built building includes, but is not limited to, residential, commercial, institutional, storage, and industrial structures.

12A-1.091(13) Any person who has purchased at retail, used, consumed, distributed or stored for use or consumption in this state tangible personal property, admissions, communication services, or leased tangible personal property, or who has leased any real property, space or spaces in parking lots or garages for motor vehicles, hangar storage or tie down for aircraft, or docking or storage space or spaces for boats in boat docks or marinas, and cannot prove that the tax levied by Chapter 212, F.S., has been paid to his vendor or lessor shall be directly liable to the state for any tax, interest, or penalty due on any such taxable transactions.

12A-1.091(14)

12A-1.091(14)(a) Any person, whether registered or unregistered, who has purchased or leased tangible personal property either in this state or from out-of-state for use, consumption, or distribution, or for storage to be used or consumed in this state without having paid sales tax on such property if subject to tax, is required to remit use tax on the cost price and on the lease of such property. If such person is registered, use tax is to be remitted with the dealer's sales and use tax return. If such person is unregistered, use tax is to be remitted on Form DR-15MO, Mail Order Use Tax Return (incorporated by reference in [Rule 12A-1.097](#), F.A.C.), on or before the 20th day of the first month after the end of the calendar quarter during which any such property first came to rest and became a part of the general mass of property in this state. When the 20th day falls on Saturday, Sunday, or a legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department of Revenue on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this rule, a legal holiday means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code. A "legal holiday" pursuant to Section 7503 of the 1986 Internal Revenue Code, as amended, means a legal holiday in the District of Columbia or a Statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

12A-1.091(14)(b) Any person required to file and remit use tax on Form DR-15MO is not considered, by virtue of that fact alone, as "engaged in or conducting business in this state as a dealer," within the meaning of [section 212.18\(3\)](#), F.S., and is not required to file an application for a certificate of registration.

12A-1.091(14)(c) Any person required to file and remit use tax on Form DR-15MO is not entitled to a collection allowance on account of keeping required records and accounting and remitting of taxes as required.

12A-1.091(14)(d) Any person required to file and remit use tax on Form DR-15MO is not required to remit local option surtaxes on property purchased in a mail order sale.

12A-1.091(15) For use tax on services taxable under Chapter 212, F.S., see Rule 12A-1.0161, F.A.C.

(Amended November 6, 1985; July 7, 1992; June 2, 1993; November 15, 1993; January 4, 1994; May 18, 1994; June 19, 2001.)