

Florida State Tax Reporter, ¶60-020, Florida, Application of Sales and Use Taxes

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Annotations

Florida sales tax is imposed on all dealers engaged in the sale, lease, or rental of tangible personal property sold at retail in the state. ([Sec. 212.05, F.S.](#)) The use tax is imposed on all persons that use, consume, distribute, or store tangible personal property in the state and applies to tangible personal property purchased outside the state that would have been subject to the sales tax if purchased from a Florida dealer. ([Sec. 212.05\(1\)\(b\), F.S.](#); [Rule 12A-1.091\(2\)\(a\)](#)) Discussed here are the issues and related definitions that lead up to the issue of taxability of transactions.

Florida sales tax is based on the point of delivery of goods and services (destination-based sourcing). Every person engaged in the business of selling tangible personal property for use, consumption, or storage for use in the state is exercising a taxable privilege. For exercising that privilege, a state sales tax is imposed on each taxable transaction if the sale is made by a dealer located in Florida and delivered to the purchaser or the purchaser's representative in Florida. ([Sec. 212.02\(2\), F.S.](#); [Sec. 212.054\(3\), F.S.](#); *E-Mail*, Florida Department of Revenue, February 11, 2008)

•2011 holiday for clothing and school supplies

State sales tax and local option tax (also known as "discretionary sales surtax") may not be collected on sales of certain items from 12:01 a.m. on August 12, 2011, through 11:59 p.m. on August 14, 2011. The holiday is applicable to the sale of:

- clothing, wallets, bags, handbags, backpacks, fanny packs, and diaper bags (but excluding briefcases, suitcases, and other garment bags), with a sales price of \$75 or less per item (for these purposes, the term "clothing" is defined as any article of wearing apparel intended to be worn on or about the human body, except for watches, watchbands, jewelry, umbrellas, or handkerchiefs, and all footwear, except for skis, swim fins, roller blades, and skates); and
- school supplies with a sales price of \$15 or less per item (for these purposes, the term "school supplies" is defined as pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue, paste, rulers, computer disks, protractors, compasses, and calculators).

The holiday is inapplicable to books. (Ch. 76 (H.B. 143), Laws 2011, ¶97-273; [Rule 12AER11-14](#))

The Florida Department of Revenue provides guidance regarding the holiday. (*Tax Information Publication*, No. 11A01-03, Florida Department of Revenue, June 22, 2011, [¶205-648](#))

Holiday restrictions.— The holiday provisions are inapplicable to sales made within a theme park, entertainment complex, public lodging establishment, or airport. (Ch. 76 (H.B. 143), Laws 2011, ¶97-273; [Rule 12AER11-14](#))

•Sales tax

Florida sales tax is imposed at a percentage of the gross receipts of sales, leases, or rentals of tangible personal property sold at retail in the state. ([Sec. 212.05, F.S.](#)) The sales tax is collected from all dealers on the sale at retail in the state of tangible personal property or taxable services. ([Sec. 212.05\(2\), F.S.](#); [Sec. 212.06\(1\)\(a\), F.S.](#)) Although dealers are liable for the tax, they are required to collect it from the purchaser or consumer. ([Sec. 212.07\(1\)\(a\), F.S.](#)) The tax is added to the sale price and must be separately stated. The tax is a debt from the consumer to the dealer until paid. ([Sec. 212.07\(2\), F.S.](#)) Collection and remittance of the tax is discussed further at [¶61-210](#) Remittance of Tax

The tax is imposed on every person who does any of the following:

- engages in the business of renting or leasing living quarters ([Sec. 212.03\(1\), F.S.](#));

- leases or rents parking or storage spaces for motor vehicles, docking or storage space for boats, or tie-down or storage space for aircraft ([Sec. 212.03\(6\), F.S.](#); [Rule 12A-1.070](#));
- leases or rents real property ([Sec. 212.031, F.S.](#), ¶94-058);
- sells admissions ([Sec. 212.04, F.S.](#));
- engages in the business of selling tangible personal property in the state, including the business of making mail order sales ([Sec. 212.05, F.S.](#));
- rents or furnishes any taxable things or services ([Sec. 212.05, F.S.](#));
- leases or rents tangible personal property in the state ([Sec. 212.05, F.S.](#)); or
- engages in the state in the business of soliciting or issuing any service warranty. ([Sec. 212.0506, F.S.](#))

Presumption of taxability.— Every sale, lease, or rental is taxable, unless it is specifically exempt. The exempt nature of the transaction must be established by the selling dealer. ([Rule 12A-1.039\(1\)\(a\)](#))

PRACTITIONER COMMENT

LLC Intercompany Transfers.—Florida has no intercompany sales exemption for sales tax purposes. Therefore, unless any sales between an LLC and its members qualify for some other exemption (i.e., resale, casual sale), there are sales tax ramifications to sale and leasing transactions between an LLC and its members. Also, many sales and property tax exemptions in Florida are tied to 501(c)(3) status and it is not clear that 501(c)(3) status of a member will flow through to the benefit of a single member LLC.

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Person.— "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, or other group acting as a unit, including a political or governmental unit. ([Sec. 212.02\(12\), F.S.](#))

"Business."— A "business" is any activity engaged in by any person for private or public gain, benefit, or advantage, either direct or indirect ([Sec. 212.02\(2\), F.S.](#)), except for occasional sales (see ¶60-590 Occasional Sales, Including Mergers) or leases to affiliates (see ¶60-460 Leases and Rentals).

"Dealer."— A "dealer" is defined as a person who does any of the following:

- manufactures or produces tangible personal property for sale at retail, use, consumption, distribution, or storage for consumption in the state;
- imports goods for sale at retail, use, consumption, distribution, or storage for consumption in the state;
- has tangible personal property for sale at retail, use, consumption, distribution, or storage for consumption in the state, including mail order transactions;
- cannot prove that the tax was paid on a sale at retail, use, consumption, distribution, or storage for consumption in the state of tangible personal property. However, the term "dealer" does not mean a person who is otherwise excluded by definition from being a "dealer" and whose only owned or leased property (including property owned or leased by an affiliate) in this state is located at the premises of a printer with which it had contracted for printing, if such property consists of the final printed product, property which becomes a part of the final printed product, or property from which the printed product is produced;
- leases or rents tangible personal property;
- maintains in the state, directly or by subsidiary, an office, distributing house, salesroom, warehouse, or other place of business;
- receives orders as a result of solicitations of business, directly or through representatives or advertising;
- receives orders as a result of solicitations of business as an agent for a principal that refuses to register as a dealer;
- leases out lodging, parking, boat storage, or aircraft storage;
- cannot prove that the tax was paid on the lease of lodging, parking, boat storage, or aircraft storage;

- cannot prove that the tax was paid on the purchase of communication services or electric power or energy;
- provides a taxable service;
- cannot prove that the tax was paid on the purchase, use, or consumption of a taxable service; or
- provides a taxable service warranty.

([Sec. 212.06\(2\), F.S.](#))

Retailer.— A "retailer" is a person engaged in the business of making sales at retail or for distribution, use, consumption, or storage for consumption in the state. ([Sec. 212.02\(13\), F.S.](#))

"Retail sale."— A "retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or taxable services. ([Sec. 212.02\(14\)\(a\), F.S.](#)) The terms "retail sale" and "sale at retail" include the sale of all tangible advertising materials imported into Florida. Tangible advertising material includes any tangible personal property that does not accompany the product to the ultimate consumer. ([Sec. 212.02\(14\)\(b\), F.S.](#)) See ¶60-240 Advertising.

"Retail sales" or "sale at retail" does not include packaging materials or the sale, use, storage, or consumption of industrial materials that become a component of a finished product (see ¶60-510 Manufacturing, Processing, Assembling, or Refining) or materials for use in repairing a motor vehicle, airplane or boat, when such materials are incorporated into the repaired vehicle, airplane or boat (see ¶60-645 Repair and Installation). ([Sec. 212.02\(14\)\(c\), F.S.](#)) Nor do the terms include mail order sales (see ¶60-500 Mail Order and Telemarketing Sales). ([Sec. 212.02\(14\)\(e\), F.S.](#))

Sale.— The term "sale" refers to any transfer of title or possession, exchange, barter, license, lease, or rental by any means of tangible personal property for consideration. Included are rentals of lodging; production of tangible personal property for consideration for consumers who furnish the materials used; furnishing food for consumption on or off the premises, including the sale of meals by an employer to employees; and transfer of property where title is retained as security for payment. ([Sec. 212.02\(15\), F.S.](#))

Tangible personal property.— "Tangible personal property" means personal property that can be seen, weighed, measured, touched, or is perceptible to the senses and includes electric power or energy, boats, motor vehicles, mobile homes, and aircraft, but not including stocks, bonds, notes, insurance, other obligations or securities, intangibles, or pari-mutuel tickets. ([Sec. 212.02\(19\), F.S.](#))

Services subject to sales and use tax.— A sales tax on services was in effect for the period July 1, 1987, to January 1, 1988. Although it was repealed, some services are still subject to sales and use tax, including transportation services and public utility services. Specific services are further discussed at ¶60-665 Services.

Intercompany sales or transfers.— See ¶60-590 Occasional Sales, Including Mergers, for a discussion on intercompany sales or transfers.

•Use tax

The use tax complements the sales tax so that, taken together, the two taxes 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. ([Rule 12A-1.091\(4\)](#)) The use tax is imposed on persons that use, consume, distribute, or store tangible personal property in the state on the basis of the purchase price of the property and applies to the use in Florida of tangible personal property purchased outside the state that would have been subject to the sales tax if purchased from a Florida dealer. ([Sec. 212.05\(1\)\(b\), F.S.](#); [Rule 12A-1.091\(2\)\(a\)](#))

Whether use tax applies to transactions involving out-of-state parties implicates federal constitutional and state statutory provisions. For a discussion of these issues see ¶60-025 Nexus—Doing Business in Florida. For any other constitutional issues relating to Florida sales and use taxes, see ¶60-075 U.S. Constitution and ¶60-080 State Constitution.

The tax is not imposed when a like tax equal to or greater than Florida use tax was paid in another state. If the amount paid in another state is less than the amount due in Florida, the taxpayer must pay the difference. ([Sec. 212.06\(7\), F.S.](#); [Rule 12A-1.091\(3\)](#))

Use.— "Use" means the exercise of any right of ownership over tangible personal property except a sale at retail in the regular course of business. ([Sec. 212.02\(20\), F.S.](#))

Storage.— "Storage" means that items are kept in Florida for use or consumption in Florida, or for any purpose other than the sale at retail in the regular course of business. ([Sec. 212.02\(18\), F.S.](#))

The terms "use," "storage," and "consumption," do not include packaging materials or the sale, use, storage, or consumption of industrial materials that become a component of a finished product (see [¶60-510](#) Manufacturing, Processing, Assembling, or Refining) or materials for use in repairing a motor vehicle, airplane or boat, when such materials are incorporated into the repaired vehicle, airplane or boat (see [¶60-645](#) Repair and Installation). ([Sec. 212.02\(14\)\(c\), F.S.](#))

The following transactions are specifically subject to the use tax:

- out-of-state purchases that would have been subject to sales tax if purchased from a Florida vendor, provided that it is presumed that property used in another state for six months or longer before being imported into Florida was not purchased for use in Florida ([Sec. 212.06\(8\)\(a\), F.S.](#); [Rule 12A-1.091](#));
- the rental or lease of tangible personal property used or stored in Florida, without regard to its prior use or to tax paid on the purchase of the property outside Florida ([Sec. 212.06\(8\)\(a\), F.S.](#); [Rule 12A-1.091](#));
- the solicitation of business by dealers, either directly or through representatives, and the reception of orders for property from consumers in Florida for use, consumption, distribution, or storage ([Rule 12A-1.091](#));
- the repair of items sent out of Florida and later returned, but not the repair of items shipped into Florida and later shipped back to their owners in other states ([Rule 12A-1.091](#));
- the importing of property for use, consumption, distribution, or storage for consumption in the state, after it has come to rest and become a part of the general mass of property in the state ([Sec. 212.06\(6\), F.S.](#); [Rule 12A-1.091](#));
- the purchase from a sales office in Florida of goods shipped to a Florida customer by a factory in another state ([Rule 12A-1.091](#));
- the sale of goods by a Florida manufacturer to an unregistered out-of-state dealer, and delivery to the customer in Florida ([Rule 12A-1.091](#));
- the delivery to Florida customers by an out-of-state supplier of law and medical books, accounting manuals, tax service books, and similar publications ([Rule 12A-1.091](#));
- the importing of a fabricated building built in the owner's plant in another state ([Rule 12A-1.091](#)); and
- the failure to prove that tax has been paid on the use, consumption, distribution, or storage for consumption in the state of tangible personal property, admissions, communication services, or leases of property.

([Rule 12A-1.091](#))

Withdrawals from inventory.— See [¶60-650](#) Resales.

•Application to specific transactions

After it has been determined that sales or use tax may apply to a transaction based on general statutory definitions, the transaction must be reviewed to determine whether the tax applies based on the specific details of the transaction.

The taxability of specific transactions is discussed in the alphabetical listing under Taxation of Persons and Transactions ([¶60-230](#) Admissions, Entertainment, and Dues through [¶60-760](#) Vending Machines).

See [¶61-010](#) List of Exemptions, Exceptions, and Exclusions, for items that are not subject to sales and use taxes and [¶61-020](#) Exemption Certificates, for a discussion of the proper use of exemption certificates. Items and factors affecting the amount subject to tax are discussed in Basis of Tax ([¶61-110](#) Tax Base through [¶61-190](#) Returned Goods and Repossessions). See also Returns, Payments, and Records ([¶61-210](#) Remittance of Tax through [¶61-270](#) Credits).

•Purchases made with Red Cross/FEMA cards

Purchases made with Red Cross client assistance cards by hurricane victims are exempt from sales and use tax. However, the exemption does not apply to purchases of taxable items made directly by storm victims using personal funds, including cash obtained by accessing funds through the client assistance cards. Purchases made with Federal Emergency Management Agency (FEMA) assistance cards are not exempt from tax. Because the cards can be used as debit cards and converted directly into cash, purchases made with FEMA assistance cards are considered to be the equivalent of cash purchases. Vouchers issued by the Red Cross and FEMA function as direct purchases by those organizations and are exempt from tax. However, purchases made with funds received through checks issued by the Red Cross or FEMA are not exempt from tax. (*Tax Information Publication, No. 05A01-17*, Florida Department of Revenue, November 30, 2005, ¶[204-803](#))

[Annotations](#)