

TIP # 02A01-09

DATE ISSUED: August 5, 2002

NEW LAW ESTABLISHES RELIEF FOR INADVERTENT SALES AND USE REGISTRATION ERRORS

Beginning July 1, 2002, a *vendor or purchaser* can apply for relief from taxes, penalties and interest due because of inadvertent sales and use tax registration errors.

Problem

At the time of purchase, the purchaser was not registered as a dealer with the Department of Revenue (DOR) or did not hold a consumer's certificate of exemption from DOR. The vendor did not collect or the purchaser did not pay a tax imposed by Chapter 212, Florida Statutes, based on a good faith belief that the transaction was a nontaxable sale or purchase for resale or the transaction was an exempt sale to or a purchase by an exempt organization.

How to Qualify

To qualify, the purchaser must meet all five of the following conditions:

1. At the time of purchase, the purchaser was not registered as a dealer with DOR or did not hold a consumer's certificate of exemption from DOR.
2. At the time of purchase, the purchaser was qualified to register with DOR as a dealer or to receive a consumer's certificate of exemption from DOR.
3. Before applying for relief of any tax, penalty, or interest, the purchaser registered with DOR as a dealer or applied for and received a consumer's certificate of exemption from DOR.
4. The purchaser established *justifiable cause* for failing to register as a dealer or to obtain a consumer's certificate of exemption before making the purchase. The establishment of justifiable cause will depend on the facts and circumstances of each case, including, but not limited to:
 - the complexity of the transaction;
 - the purchaser's business experience and history;
 - whether the purchaser sought advice on his or her tax obligations, and whether such advice was followed; and,
 - any remedial action taken by the purchaser.
5. The transaction would have been exempt except for the fact that at the time of purchase the purchaser was not registered as a dealer with DOR or did not hold a consumer's certificate of exemption from DOR.

Time Limitations

To qualify, the purchaser must apply for relief within one of the following timeframes:

- Before DOR initiates any audit or other action or inquires in regard to the *purchaser or the vendor*; or
- If any audit or other action or inquiry of the *purchaser or the vendor* has already been initiated, within seven days after being informed in writing by DOR that the purchaser was required to register or to hold a consumer's certificate of exemption at the time the transaction occurred. (Note: The seven-day period begins with the date on the letter issued by DOR. The purchaser's or vendor's request for relief must be postmarked, faxed, or e-mailed within seven days from the date on the letter issued by DOR. If the seventh day falls on a Saturday, Sunday, or state or federal holiday, the postmark date, the faxed date or the e-mail date should be on the first working day following the seventh day).
- *Purchasers or vendors* with pending sales and use tax audits or other actions or inquiries, including those currently under protest or in litigation, have until the later of the date provided above or 90 days after July 1, 2002 (September 29, 2002), to apply for relief.

Mandatory Penalty

In lieu of taxes, penalties, and interest that would normally be due, DOR must impose and collect mandatory penalties which cannot be waived:

1. If a *purchaser or vendor* applies for relief before DOR initiates any audit or other action or inquiry, the mandatory penalty is the lesser of \$1,000 or 10 percent of the total tax due on transactions that qualify for relief.
2. If a *purchaser or vendor* applies for relief after an audit or other action or inquiry has already been initiated by DOR, the mandatory penalty is the lesser of \$5,000 or 20 percent of the total tax due on transactions that qualify for relief.

The Department can impose and collect these penalties from *either the purchaser or the vendor* who failed to obtain proper documentation at the time of the transaction.

Requesting Relief

- If you have any pending audit, or other action or inquiry, including those currently under protest or in litigation, and you qualify for relief under this provision, you should contact the DOR employee handling the pending audit, protest or litigation, or other action or inquiry. You must make a written request that provides a detailed explanation of your eligibility to qualify for this relief. The written request must explain why you believe each of the conditions listed above under **How to Qualify** has been met or what steps will be taken to meet any conditions that have not yet been met.
- If you wish to voluntarily apply for relief before the DOR initiates any audit or other action or inquiry, and you qualify for relief based on the five above conditions, you should contact the local DOR service center. You must make a written request that provides a detailed explanation of your eligibility to qualify for this relief. The written request must explain why you believe each of the conditions listed above under **How to Qualify** has been met or what steps will be taken to meet any conditions that have not yet been met.

Do I have a Right to Apply for a Refund?

This provision **does not** create a right to refund for taxes that have been paid unless the taxes were paid after the initiation of and as a result of an audit or action or inquiry that was still pending on July 1, 2002.

References: Section 212.07(9), Florida Statutes; Section 15 of CS/SB 426, Chapter 2002-218, Laws of Florida

FOR MORE INFORMATION

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For forms and other information, visit our site at www.myflorida.com/dor. Or call Taxpayer Services, Monday through Friday, 8:00 a.m., to 7:00 p.m., ET, at 800-352-3671 (for Florida residents only), or 850-488-6800

Hearing- or speech-impaired persons should call our TDD at 1-800-367-8331 or 850-922-1115.

For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services, 1379 Blountstown Highway, Tallahassee, FL 32304-2716.

To receive a fax copy of a form, call 850-922-3676 from your fax machine telephone.