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Draft/Sales Tax Emergency Rules - 6/10/87

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THE FOLLOWING IS A WORKING DRAFT OF THE DEPARTMENT OF REVENUE'S PROPOSED EMERGENCY RULES. IT IS NOT FINAL, NOR IS IT TO BE CONSTRUED AS THE FINAL POSITION OF THE DEPARTMENT OF REVENUE. THE SOLE PURPOSE FOR THESE DRAFT RULES IS TO FACILITATE COMMENTS BY AFFECTED PERSONS THEREBY AIDING THE DEPARTMENT OF REVENUE IN DEVELOPING FINAL EMERGENCY RULES.

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2 12-ER-87-1 Sales Tax On Services.

3 (1) A tax is imposed on the sale at retail of any
4 service in this state at the rate of 5 percent of the sales
5 price of the service. The tax shall be computed on each
6 taxable sale of a service for the purpose of remitting the
7 amount of tax due the state, and shall include each and
8 every retail sale of a service.

9 (2) The sale of a service is in this state if the
10 service is performed wholly within this state, or if the
11 service is performed partly within and partly outside this
12 state but the greater proportion of the service is performed
13 within this state, based on costs of performance.

14 (3)(a) "Costs of performance" means direct costs
15 determined in a manner consistent with generally accepted
16 accounting principles and in accordance with accepted
17 conditions or practices in the type of trade or business in
18 which the service provider taxpayer engages.

19 (b) "Direct costs" is defined as those operating
20 expenses traceable to, incurred for the sole benefit of and
21 allocated to a specific service and which are ordinarily
22 subject to the control of the service provider.

23 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
24 Chapter 87-6 Laws of Florida.

25 Law Implemented Sections 1 and 7, Chapter 87-6, Laws of
26 Florida; Section _____, Chapter 87-____, Laws of Florida;
27 Section _____, Chapter 87-____, Laws of Florida.

28 History - New 7-1-87.
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2
3 12-ER-87-2 Use Tax On Services.

4 (1)(a) A tax is imposed on the use of any service in
5 this state when the sale of the service is at retail outside
6 this state, at the rate of 5 percent of the cost price of
7 the service. The use of a service is in this state, if the
8 benefit of the service is enjoyed in this state and the
9 purchaser of the service has tax nexus with Florida.

10 (b) The use tax shall be collected and remitted by the
11 seller if he has a tax nexus with Florida and:

12 1. The service directly relates to real property in
13 Florida;

14 2. The service directly relates to tangible personal
15 property in this state (except for vehicles and vessels
16 engaged in interstate or foreign commerce); or

17 3. The service is represented by tangible personal
18 property which is forwarded to a natural or non-natural
19 person in this state.

20 (2)(a) For purposes of determining where the benefit of
21 the service is enjoyed, if the purchaser of the service is
22 an individual (a natural person not conducting business),
23 and the service does not relate to a decedent's estate (See
24 Rule 12-ER-87-2(8)(c)), is not interstate or international
25 transportation (See Rule 12-ER-87-34) or interstate
26 advertising (See Rule 12-ER-87-44), the following shall
27 apply:

28 1. If the service directly relates to and
29 benefits specific real property, the benefit of the service
30 shall be presumed to be enjoyed ~~in the state~~ where the real
31 property is located; or

32 2. If the service is not directly related to real
33 property, the benefit of the service shall be presumed to be
34 enjoyed where the purchaser receives tangible personal
35 property representing the service; or

1 3. If the service is not directly related to real
2 property, or tangible personal property, the benefit of the
3 service shall be presumed to be enjoyed ~~in the state~~ where
4 the greater proportion of the service is performed, based on
5 costs of performance.

6 ~~4.6.~~ However, if the purchaser can demonstrate to
7 the satisfaction of the Department on a case by case basis
8 that the benefit of the service was enjoyed outside this
9 ~~another~~ state, the service shall be deemed used or consumed
10 outside this ~~in that~~ state. In determining whether the
11 benefit of a service is enjoyed in this state the Department
12 shall consider whether the result of the service could give
13 rise to a cause of action in Florida under s. 48.193, F.S.

14 (b) For purposes of determining where the benefit of
15 the service is enjoyed, if the purchaser is a business, and
16 the service is not interstate or international
17 transportation or advertising, the following shall apply:

18 1. If the service directly relates to and
19 benefits specific real property, the benefit of the service
20 shall be presumed to be enjoyed ~~in the state~~ where the real
21 property is located; or

22 2. If the service directly relates to and
23 benefits specific tangible personal property, the benefit of
24 the service shall be presumed to be enjoyed ~~in the state~~
25 where the property has acquired a business situs if the
26 property has acquired such situs; or

27 3. If the service directly involves sales to a
28 local market of the purchaser of the service, the benefit of
29 the service shall be presumed to be enjoyed ~~in the state~~
30 where the purchaser's local market exists; or

31 4. If subparagraphs 1., 2., and 3. of this
32 paragraph are not applicable, and the purchaser of the
33 service is doing business in this state and outside of
34 Florida ~~in one or more other states~~, the service shall be
35 presumed to be enjoyed in Florida ~~this state~~ to the extent

1 that the purchaser is doing business in Florida this state.
2 In the case of an affiliated group, the affiliated group
3 shall be considered the purchaser for purposes of this
4 subparagraph. For purposes of determining the extent to
5 which the purchaser is doing business in this state, an
6 apportionment formula shall be utilized.

7 a. The apportioned sales or use tax base to which this
8 paragraph applies shall be determined by multiplying the
9 entire sales or cost price of the service by a fraction
10 which is the sum of the Florida property, payroll, and sales
11 factors which have been weighted as outlined in
12 sub-subparagraph b below. The determination of the sale,
13 property and payroll factors shall be in accordance with ss.
14 214.71, 214.72, 214.73, F.S. The calculation of the
15 apportionment formula for an affiliated group will include
16 the property, payroll, and sales of all members of the
17 affiliated group as defined in s. 212.02(2), F.S., excluding
18 members which a taxpayer has properly elected to exclude
19 from the group pursuant to s. 212.02(2), F.S., and rule
20 12ER-87-10(2), F.A.C. The apportionment fraction
21 applied to transactions occurring during the purchaser's tax
22 year shall be calculated with payroll, property and sales
23 data representing the most recent tax year for which the
24 purchaser has filed a Florida or federal income tax return
25 prior to the beginning of the current tax year. Since
26 payments made on ordinary tax returns (DR-15) filed during
27 the current year represent historic apportionment data
28 applied to current taxable transactions, these payments
29 shall operate as estimated or tentative payments in the
30 context of Chapter 214 apportionment provisions. A
31 reconciliation is therefore necessary after the close of the
32 current year once apportionment data is available for said
33 year. On or before the due date including any extension
34 granted by Department of Revenue for filing a Florida or
35 federal income tax return for the current year, the taxpayer

1 shall file a Supplementary Sales Tax Return for Exempt
 2 Purchase Permit Holders (DR-15SUP), dated July, 1987, which
 3 is hereby incorporated in this rule and made part of this
 4 rule by reference. The Supplementary Sales Tax Return for
 5 Exempt Purchase Permit Holder (DR-15SUP) is available,
 6 without cost, upon written request directed to the
 7 Department of Revenue Supply Section, Tallahassee, Florida
 8 32399-0100. The supplementary return shall summarize
 9 taxable purchases of services and shall show recalculated
 10 tax liabilities for apportionable services purchased during
 11 said year utilizing payroll, property and sales data for
 12 said year. These liabilities shall operate as final
 13 payments in the context of the Chapter 214 apportionment
 14 provisions. If the recalculated liabilities are greater
 15 than the amounts shown on the original tax returns, the
 16 taxpayer shall remit the difference. If the recalculated
 17 liabilities are less, the taxpayer may claim an equivalent
 18 credit on his subsequent sales tax return or apply for a
 19 refund.

20 b. The weighted three-factor apportionment fraction
 21 shall be calculated as the sum of the sales factor
 22 multiplied by 50 percent, plus the property factor
 23 multiplied by 25 percent, plus the payroll factor multiplied
 24 by 25 percent.

25 Example: Corporation is a small loan company having 75
 26 offices in Florida and 150 additional offices in Georgia and
 27 South Carolina. Corporation B purchases computer services
 28 from a company doing business exclusively in Georgia.

29 The prior years sales, payroll, and property of corporation
 30 B was as follows:

31
 32 (Florida) \$25,000,000 X .50 = .192308
 33 Sales: (Everywhere) \$65,000,000
 34 Payroll: (Florida) \$600,000 X .25 = .100000
 35 (Everywhere) \$1,500,000
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Property: (Florida) \$3,500,000 X .25 = .087500
(Everywhere)\$10,000,000

Total Apportionment Fraction: .379808

The charge made to corporation B for
the computer services was: \$8,450.00

The Apportioned Tax Base Is: \$3,209.38

Florida Use Tax Payment is: \$ 160.47

(Note: A subsequent adjustment may be necessary when the
apportionment factor, for the current year is calculated.)

c. In the event the property or payroll factor has a
denominator which is zero or is determined by the department
to be insignificant, the weighting percentage for the sales
factor shall be 67% of the apportionment and the weighting
percentage for the other non-zero or significant factor
shall be 33%. Similar adjustment shall be made for other
insignificant denominators.

d. The term "everywhere" which is used in the
computation of apportionment factor denominators, means in
all states of the United States, the District of Columbia,
the Commonwealth of Puerto Rico, any territory or possession
of the United States, and any foreign country, or any
political subdivision of the foregoing.

e. If the purchaser of a service is a new business,
and the apportionment formulas are unknown, an estimate will
be acceptable for the period for which the apportionment
formulas remain unknown. The estimate shall be based upon a
reasonable calculation utilizing sales, property, and
payroll (except insurance companies). This estimate shall
be applied each month to the total services. Upon
determination of known apportionment factors a correction is
required for purposes of any overpayment or underpayment of

1 tax.

2 5. If the provisions of subparagraphs 1., 2., 3., and
3 4. of this paragraph are not applicable, the benefit of the
4 service shall be presumed to be enjoyed ~~in the state~~ where
5 the purchaser is exclusively doing business.

6 6. However, if the purchaser can demonstrate to the
7 satisfaction of the department on a case by case basis that
8 the benefit of the service was enjoyed outside Florida
9 ~~in another state~~, the service shall be deemed used or
10 consumed outside Florida ~~in that state~~. In determining
11 whether the benefit of a service is enjoyed in this state
12 the Department shall consider whether the result of the
13 service could give rise to a cause of action in Florida
14 under s. 48.193, F.S.

15 (c) Interstate and international transportation
16 services shall be presumed to be enjoyed in this state to
17 the extent of the provisions of s. 212.059(5), F.S.

18 (d) Advertising services shall be presumed to be
19 enjoyed in this state to the extent of the provisions of s.
20 212.0595(3) and (4).

21 (e) The benefit of a service performed for the estate
22 of a decedent is presumed to be enjoyed in the state in
23 which the decedent last established residency. Residency
24 for purposes of this subsection means the place where the
25 decedent last established domicile pursuant to s. 198.015,
26 F.S. (1985).

27 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
28 Chapter 87-6 Laws of Florida.
29 Law Implemented Sections 1 and 2, Chapter 87-6, Laws of
30 Florida and Section __, Chapter 87-__. Laws of Florida.
31 History - New 7-1-87.

2 12-ER-87-3 Services Sold for Use Outside this State;
3 Registration and Other Required Permits.

4 (1) Services sold in this state for use outside of this
5 state are exempt. Services are sold for use outside of this
6 state when the benefit of the service is enjoyed outside
7 this state. For the purpose of determining where the
8 benefit of the services is enjoyed, the provisions of Rule
9 12-ER-87-2(2) shall apply.

10 (2)(a) In order to claim the exemption on services sold
11 in this state for use outside this state under Rule
12 12-ER-87-3(1), F.A.C., any business or group of businesses
13 without tax nexus in this state, and any individual resident
14 in another state, prior to claiming the exemption under Rule
15 12-ER-87-3(1), F.A.C., must obtain from the Department of
16 Revenue ~~an Exempt Service Purchase Permit (DR-11P) or an~~
17 Exempt individual Service Purchase Permit for Out of State
18 Businesses and Persons (DR-14P), dated July, 1987, which is
19 hereby incorporated in this rule and made part of this rule
20 by reference, and consent to be subject to the jurisdiction
21 of this state solely for the purpose of enforcement of the
22 sales tax on services, or shall execute and present to the
23 selling dealer at the time of sale an Exempt Service
24 Purchase Affidavit (DR-14A) dated July 1987, which is hereby
25 incorporated in this rule and made a part of this rule by
26 reference and reproduced. The Exempt Service Purchase
27 Affidavit is available without cost, upon written request
28 directed to the Department of Revenue, Supply Section,
29 Tallahassee, Florida 32399-0100 ~~ascribed~~ in paragraph (e).

30 (b) To procure an Exempt Service Purchase Permit for
31 Out of State Businesses and Persons (DR-14P~~11P~~), the
32 business or group of businesses without tax nexus in this
33 state, must file with the Department an Application for
34 Exempt Service Purchase Permit for Out of State Businesses
35

1 ~~and Persons and/or Service Resale Permit~~ (DR-1EP), dated
2 July, 1987, which is hereby incorporated in this rule and
3 made part of the rule by reference, or an Application for
4 Sales and Use Tax Registration (DR-1), revised July, 1987.
5 The effective date of the Exempt Service Purchase Permit for
6 Out of State Businesses and Persons (DR-~~14P~~) shall be the
7 postmark date of the Application for Exempt Purchase Permit
8 for Out of State Businesses and Persons (DR-1EP), or
9 Application for Sales and Use Tax Registration (DR-1),
10 revised July, 1987, ~~and/or Service Resale Permit~~ if mailed,
11 or the date received by the Department, if delivered by
12 means other than mail. Applications for Exempt Service
13 Purchase Permits (DR-1EP) Application for Sales and Use Tax
14 Registration (DR-1), revised July, 1987, and Exempt Service
15 Purchase Permit for Out-of-State Business and Persons
16 (DR-14P) are available, without cost, upon written request
17 directed to the Department of Revenue, Supply Section,
18 Tallahassee, Florida 32399-0100.

19 (c) To procure an Exempt ~~individual~~ Service Purchase
20 Permit for Out of State Businesses and Residents (DR-14P),
21 an individual resident of another state must file with the
22 Department an Application for Exempt Service Purchase Permit
23 (DR-~~1EP~~+5AP), or an Application for Sales and Use Tax
24 Registration (DR-1) revised July, 1987, ~~dated July 1, 1987,~~
25 ~~which is hereby incorporated in this rule and made part of~~
26 ~~the rule by reference.~~ The effective date of the Exempt
27 ~~individual~~ Service Purchase Permit for Out of State
28 Businesses and Persons (DR-14P) shall be the postmark date
29 of the Application for Exempt Service Purchase Permit
30 (DR-~~1EP~~+5AP) or an Application for Sales and Use Tax
31 Registration (DR-1) revised July, 1987 if mailed, or the
32 date received by the Department if delivered by means other
33 than mail. Applications for Exempt Service Purchase Permits
34 (DR-~~1EP~~+5AP), or an Application for Sales and Use Tax
35 Registration (DR-1) revised July, 1987 are available,

1 without cost, upon written request directed to the
2 Department of Revenue, Supply Section, Tallahassee, Florida
3 32399-0100.

4 (d) Acceptance of a valid Exempt Service Purchase
5 Permit for Out of State Businesses and Persons
6 (~~DR-14P11F~~), ~~or Exempt Individual Service Purchase~~
7 ~~Permit (DR-14P)~~, or Exempt Service Purchase Affidavit
8 ascribed in paragraph (e) shall absolve the selling dealer
9 from the responsibility of collecting any sales tax which
10 may be due on the service.

11 (e) The following is a mandatory ~~suggested~~ affidavit to
12 be completed by a business or group of businesses without
13 tax nexus in this state and an individual resident of
14 another state claiming exemption under section 212.0592(1),
15 F.S., as provided in Rule 12-ER-87-3(2)(a).

16 EXEMPT SERVICE PURCHASE AFFIDAVIT

17
18 Affidavit for claiming an exemption under services.
19 212.0592(1), F.S.

20 -----
21 Section 1. To Be Completed By The Seller:

22 Selling dealers sales tax number: _____
23 Name of selling dealer: _____
24 Address of selling dealer: _____
25 City, state and zip _____
26
27 Type of service sold: _____
28 Price of the service sold for
29 which exemption is claimed: _____

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31 Section 2. To Be Completed In The Case Of A Business Without
32 A Tax Nexus In Florida, Purchasing Services To Be Used
33 Outside Of Florida.
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Name of Business	Federal Employee Identification Number or Social Security Number
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**Name of Owner, Officer or Director (Same As Person Making
Affidavit)**

Business Location Address	Business Mailing Address
City State Zip	City State Zip

I, the undersigned authority, hereby certify as follows:

1. The business that I represent is purchasing said services for use outside of the State of Florida.
2. The business that I represent does not have a tax nexus in the State of Florida.
3. The business that I represent does consent to be subject to the jurisdiction of the State of Florida solely for the purpose of enforcement of sales tax on services imposed pursuant to Chapter 212 of the Florida Statutes.

Section 3. To Be Completed By A Resident Of Another State,
Purchasing Services To Be Used Outside Of Florida.

Name of Individual (Same as Person Making Affidavit)	Social Security Number
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Residence Location Address Telephone Number

Residence Residence
City State Zip

I, the undersigned individual, hereby certify as follows:

- 1. I am purchasing said services for use outside of the State of Florida.
- 2. I am not a resident of the State of Florida.
- 3. I consent to be subject to the jurisdiction of the State of Florida solely for the purpose of enforcement of sales tax on services imposed pursuant to Chapter 212 of the Florida Statutes.

Section 4.

Under the penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Signature of person executing
the affidavit

Date

Sworn to and subscribed before me this _____ day of _____, 19__.

(Notary Public for Florida)

1 (3)(a) In order to claim the exemption for services sold
2 in this state for use outside this state under s.
3 212.0592(1), F.S., each multistate business having tax nexus
4 in this state, prior to claiming the exemption, must obtain
5 from the Department an Exempt Service Purchase Permit,
6 (DR-11T), dated July 4, 1987, which is hereby incorporated
7 in this rule and made part of the rule by reference, prior
8 to claiming the exemption. The Exempt Service Purchase
9 Permit (DR-11T) shall be used by a multi-state business
10 having tax nexus in this state when purchasing any service
11 sold in this state except interstate and international
12 transportation or advertising, regardless of whether the
13 service is used in this state.

14 (b) To procure an Exempt Service Purchase Permit
15 (DR-11T), the multistate business having nexus in this state
16 must file with the Department an Application for Exempt
17 Purchase Permit ~~and/or Service Resale Permit (DR-1EP)~~, dated
18 July, 1987, which is hereby incorporated in this rule and
19 made part of the rule by reference or an Application for
20 Sales and Use Tax Registration (DR-1) revised July, 1987.
21 The effective date of the Exempt Service Purchase Permit
22 (DR-11T) shall be the postmark date of the Application for
23 Exempt Purchase Permit ~~and/or Service Resale Permit (DR-1EP)~~
24 or an Application for Sales and Use Tax Registration (DR-1)
25 revised July, 1987, if mailed, or the date received by the
26 Department, if delivered by means other than mail.
27 Applications for Exempt Service Purchase Permits (DR-1EP)
28 and Application for Sales and Use Tax Registration (DR-1)
29 revised July, 1987, are available, without cost, upon
30 written request directed to the Department of Revenue,
31 Supply Section, Tallahassee, Florida 32399-0100.

32 (c) Upon purchasing any ~~a~~ service except interstate and
33 international transportation or advertising from a dealer
34 registered with the Department, presentation by the
35 multistate business having nexus with this state of a valid
36

1 Exempt Service Purchase Permit, (DR-11T), shall absolve the
2 selling dealer from the responsibility of collecting
3 sales tax which may be due on the service. The multistate
4 business shall self-accrue any taxes which are due on
5 services used in this state and remit the tax to the
6 Department in the manner and under the requirements
7 applicable to dealers under the provisions of Part I of
8 Chapter 212, F.S.

9
10 (4)(a) If a purchaser fails to obtain an Exempt Service
11 Purchase Permit (DR-11T), Exempt ~~Individual~~ Service
12 Purchase Permit for Out of State Businesses and Persons
13 (DR-14P) or execute an Exempt Service Purchase Affidavit
14 (DR-14A) but otherwise qualifies for an exemption, the
15 purchaser may apply to the Department for a refund of taxes
16 paid on the exempt amount of the purchase.

17 (b) To receive a refund of tax authorized pursuant to
18 Rule 12-ER-87-3(4)(a), F.A.C., the purchaser of the service
19 for which the refund is sought must:

- 20 1. File an Application for Refund from the State
21 of Florida (DR-26);
- 22 2. Execute an Exempt Service Purchase Affidavit
23 (DR-14A) ~~described in paragraph (c) of subsection (2)~~, which
24 shall be attached to the Application for Refund; and
- 25 3. Attach a copy of the sales invoice, executed
26 by the seller of the service, to the Application for Refund,
27 which invoice shall contain the following information:
 - 28 a. The name and address of the purchaser;
 - 29 b. A description of the service rendered;
 - 30 c. The date on which the purchase was made;
 - 31 d. The price and amount of Florida sales tax paid
32 for said service; and
 - 33 e. The name and place of business of the provider
34 of the service.

35 (c) The Application for Refund shall be submitted
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1 within 1 year of the purchaser's payment of the tax for
2 which the refund is sought.

3 (d) The refund amount recommended by the Department
4 shall be 97 percent of the first \$1,000 of Florida tax paid
5 on the exempt amount of the purchase and 99 percent of the
6 all amounts in excess of \$1,000.

7 (e) Applications for Refund from the State of Florida
8 (DR-26) are available, without cost, upon written request
9 directed to the Department of Revenue, Supply Section,
10 Tallahassee, Florida 32399-0100.

11 (5) Each selling dealer shall maintain a monthly log
12 showing each transaction for which sales tax was not
13 collected because of the presentation of an Exempt Service
14 Purchase Permit (DR-11T), an Exempt ~~Individual~~ Service
15 Purchase Permit for Out of State Businesses and Persons
16 (DR-14P), or an Exempt Service Purchase Affidavit. The log
17 shall identify the name and address of the purchaser, the
18 exempt purchase permit number if applicable, the description
19 of service sold, the sales invoice number, the basis for the
20 exemption, the date on which the sale was made, and the
21 price of the service. The logs and all Exempt Service
22 Purchase Affidavits ~~(DR-14A) described in paragraph (e) of~~
23 ~~subsection (2)~~ accepted by the dealer shall be retained by
24 the dealer for 5 years and made available to the department
25 upon request. Failure to maintain these records or to make
26 them available to the department shall subject the dealer to
27 a \$100 mandatory penalty. ~~the penalties provided in s.~~
28 ~~212.13, F.S.~~

29 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
30 Chapter 87-6 Laws of Florida.
31 Law Implemented Sections 2, 3, 4, and 18, Chapter 87-6, Laws
32 of Florida.
33 History - New 7-1-87.

2 12-ER-87-4 Sale of Service for Resale.

3 (1) A sale of a service, except for construction
4 services, shall be considered a sale for resale only if:

5 (a) The purchaser of the service does not use or
6 consume the service, but acts as a broker or intermediary in
7 procuring a service for his client or customer;

8 (b) The purchaser of the service buys the service
9 pursuant to a written contract with the seller and such
10 contract identifies the client or customer for whom the
11 purchaser is buying the service;

12 (c) The purchaser of the service separately states the
13 value of the service purchased at the purchase price in his
14 charge for the service on its subsequent sale;

15 (d) The service, with its value separately stated, will
16 be taxed under this part in a subsequent sale, unless the
17 service is exempt pursuant to s. 212.0592(1) as a sale of a
18 service in this state for use outside this state; and

19 (e) The service is purchased pursuant to a service
20 Resale Permit (DR-11T), dated July 4, 1987, hereby
21 incorporated and made part of this rule by reference, by a
22 person who is primarily engaged in the business of selling
23 services.

24 Example #1: Courier services purchased by a law firm would
25 be taxable because they are consumed by a law firm in
26 performing its services for its client. The fact that such
27 services might be separately stated on the law firm's bill
28 to its client would not transform such services into those
29 that are "resold" to the client. The law firm uses or
30 consumes the courier services in the performance of the law
31 firm's duties to its client, delivery of legal services in a
32 timely fashion.

33 Example #2: Spotless Cleaners is asked to remove a spot on
34 a suede coat. It has no equipment to clean suede so it
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sends the coat to Acme Cleaners which has such equipment. Spotless is not required to pay the tax to Acme since Spotless is not using or consuming Acme's services, but is merely acting as broker. When Spotless bills the coat owner, Spotless must charge the tax on the full amount of its bill to coat owner, including any mark-up of Spotless's costs.

Example #3: Environmentalist asks Lawyer to get court reporter to transcribe a hearing on an environmental matter held several months earlier. Environmentalist believes the hearing was improperly conducted and wishes to find out for himself. Lawyer may extend a service resale permit to court reporter and purchase the transcript tax free since he is not using court reporter's services, but merely brokering them. Lawyer must however charge the tax on the full amount of his bill to environmentalist including any mark-up of Lawyer's costs.

Example #4: In the example in #3 above, several days later, after reading the transcript, Environmentalist retains Lawyer to challenge permit issued as a result of the hearing. Lawyer later learns of an additional hearing on the matter. Lawyer has the second ~~2nd~~ hearing transcribed and determines that the permit was lawfully issued and so advises Environmentalist. Here Lawyer uses Court Reporter's services and therefore must pay the tax to Court Reporter. When Lawyer bills Environmentalist with the cost of Reporter's services included, Environmentalist must pay the tax on Lawyer's full charge, including Lawyer's costs (the amount Lawyer paid to Reporter).

Example #5: Speculator asks Lawyer to do a title search on some land. Lawyer doesn't do title searches but indicates he can get Title Company to do one. Lawyer does not guarantee title work, offer title opinion, or otherwise represent to Speculator that Lawyer warrants titles. Lawyer may buy the title search for the Speculator tax free so long

1 as Lawyer charges Speculator the tax on Lawyer's full
2 charge, including costs.

3 Example #6: In the example in #5 above, Speculator asks
4 Lawyer to give title opinion. Again, Lawyer does not search
5 titles but does issue opinions based on title searches.
6 Here, since Lawyer uses title search to render his opinion,
7 Lawyer must pay tax when he purchases the title search and
8 Speculator must pay a tax on Lawyer's full charge, including
9 Lawyer's costs (the amount Lawyer paid to Title Company).

10 (2) Service Resale Permits (DR-11T) shall be issued by
11 the Department to any person who is primarily engaged in the
12 business of selling services upon such person filing with
13 the Department an Application for Certificate of
14 Registration (DR-1), incorporated by reference in Rule
15 12A-1.097(1), F.A.C., (See 12-ER-87-6). Applications for
16 Certificate of Registration (DR-1) are available, without
17 cost, upon written request directed to the Department of
18 Revenue, Supply Section, Tallahassee, Florida 32399-0100.
19 Upon formal approval of the completed application, the
20 Department shall issue a Service Resale Permit (DR-11T).
21 The effective date of the Service Resale Permit (DR-11T)
22 shall be the postmark date of the Application for
23 Certificate of Registration (DR-1), if mailed, or the date
24 received by the Department, if delivered by means other than
25 mail. The purchase of a service for resale shall not be
26 authorized for purchases made prior to the effective date of
27 the Service Resale Permit (DR-11T). Every dealer, who is
28 primarily engaged in the business of selling services, must
29 renew his Service Resale Permit (DR-11T) every five (5)
30 years from the effective date of such permit. The
31 Department shall review each renewal request to ensure that
32 the dealer is still engaged in the business of selling
33 services.

34 (3)(a) When a sale of a service is made to a person who
35 claims to be entitled to purchase services for resale, the
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1 seller of the service being a duly registered dealer
2 pursuant to Part I of Chapter 212, F.S., shall obtain from
3 the purchaser of the service a service resale certificate.
4 The resale certificate, executed by the purchaser of the
5 service, shall contain a statement to the effect that the
6 service is being purchased exclusively for resale pursuant
7 to s. 212.02(19), F.S., as amended by section 7 of Chapter
8 87-6, Laws of Florida and the statement shall include the
9 following information:

- 10 1. The name of the person selling the service;
- 11 2. The purchaser's Service Resale Permit Number;
- 12 3. The effective date of the purchaser's Service
13 Resale Permit;
- 14 4. The date on which the purchase was made;
- 15 5. The purchaser's name and address;
- 16 6. A description of the service purchased;
- 17 7. The sales price of the service purchased;
- 18 8. The signature of the person executing the
19 statement; and
- 20 9. The date of execution of the statement.

21 (b) The following is a suggested service resale
22 certificate form to be completed by the purchaser and
23 presented to the seller. This certificate is to continue in
24 force until revoked by written notice to the supplier and
25 the Department of Revenue.

26 SUGGESTED BLANKET SERVICE RESALE CERTIFICATE

27
28 This is to certify that the service described below
29 purchased from _____ (name of selling dealer) is
30 purchased exclusively for resale pursuant to s. 212.02(19),
31 F.S., as amended by section 7 of Chapter 87-6, Laws of
32 Florida.

33 Date of Purchase _____

34 Description of service purchased _____

35 Sales price of the service purchased \$ _____

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Purchaser's Name _____

Purchaser's Address _____

Purchaser's Service Resale Permit No. _____

Expiration Date of Registration as a Service Provider _____

Effective Date of Resale Service Permit _____

By _____

(Signature)

Date Signed _____

(c) Any dealer who makes a sale for resale of a service which is not in compliance with the provisions of this subsection shall himself be liable for and pay the tax.

(d) Any person who fraudulently issues to any dealer or agent of the State a service resale certificate or statement in writing for the purpose of evading payment of sales tax, in addition to being liable for payment of the sales tax, plus a mandatory penalty of 100% of the tax, shall also be liable for fine and punishment as provided by law for conviction of a misdemeanor of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

(4) Notwithstanding the provisions of subsection (1), a sale of telecommunication services to other than an end user consisting of a right of access for which an access charge, as defined in s. 203.012(1), F.S., is imposed, is a sale for resale.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 212.07(1)(b), 212.085 FS., Chapter 87-6, Laws of Florida.

History - New 7-1-87.

12-ER-87-4.1 "Retail Sale" or a "Sale at Retail"

(1) The terms: "retail sale", "sale at retail", "use", "storage", and "consumption", do not include the following:

(a) Fee-sharing for services described in s. 475.011, F.S. (1986 Supplement) by persons licensed under Chapter 475 ~~between real-estate agents and real-estate brokers~~ when said fees were earned solely for the services listed in 475.01(c) F.S. If the fee is received in a lump sum and includes remuneration for services not listed in said statute, a portion of the lump sum representing the nonlisted services should be separately, stated from the lump sum and regarded as taxable unless otherwise exempt.

(b) The materials, containers, labels, sacks, or bags intended to be used one time only for packaging tangible personal property for sale even if the packaging occurs in providing a service taxable under this part.

2 12-ER-87-5 Combined Transactions - Application of
3 Resale Provisions.--

4 (1)(a) If a transaction involves both the sale or use
5 of a taxable service and the sale or use of intangible or
6 real property which is not subject to tax, the charges shall
7 be separately identified and stated with respect to the
8 taxable and nontaxable portions of the transaction. The tax
9 shall apply to the transaction to the extent that the
10 consideration paid in connection with the transaction is
11 payment for the sale or use of services. Failure to
12 separately state the charges shall create a presumption that
13 the entire transaction is taxable.

14 (b) If a transaction involves both the sale or use of a
15 taxable service and the sale or use of an exempt service,
16 the consideration paid shall be separately identified and
17 stated with respect to the taxable and exempt portions of
18 the transaction as a condition of the exemption. However,
19 the provisions of this paragraph shall not apply to services
20 sold in this state for use outside this state.

21 (2)(a) The purchase of services to alter, remodel,
22 maintain, adjust, or repair tangible personal property of
23 the type which is normally sold in the regular course of the
24 retailer's business is subject to tax. The purchase of
25 tangible personal property which becomes an ingredient or
26 component part of the altered, remodeled, maintained,
27 adjusted, or repaired item may be purchased for resale tax
28 exempt, except for tangible personal property physically
29 incorporated into improvements to realty through new
30 construction, additions to existing improvements or repairs
31 to existing improvements.

32 (b) EXAMPLE: C owns a retail appliance store and
33 contracts with D to repair a refrigerator that C is going to
34 resell. D uses no parts in repairing the refrigerator. C
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1 cannot purchase the repair service tax exempt from D.

2 (c) EXAMPLE: F owns a retail appliance store and
3 contracts with G to repair a stove that F is going to
4 resell. G uses parts and labor to repair the stove. The
5 labor charge is capable of being separately billed and
6 calculated, as is the cost of the parts. F cannot purchase
7 the repair service from G tax exempt. The tangible personal
8 property may be purchased tax exempt for resale provided a
9 valid resale certificate is issued in lieu of tax at the
10 time of sale.

11 (3) Tangible personal property purchased by a person
12 who is engaged in the business of performing or providing a
13 service is purchased for resale and not subject to tax at
14 the time of purchase when:

15 (a) The purchaser extends a valid resale certificate to
16 the dealer at the time of sale;

17 (b) The property is transferred to the customer in
18 conjunction with the performance of the service in a form
19 and quantity to which a fixed or definite sales price can be
20 ascribed and in a form and quantity typically associated
21 with sales of such property; and

22 (c) The property is actually sold to the customer in
23 conjunction with the performance of the service as indicated
24 by a separate charge for the specifically described and
25 identifiable items.

26 1. EXAMPLE: A television repairman may purchase
27 television tubes for resale tax exempt where the repairman
28 makes a separate charge for the tube to the customer, since
29 the tube is transferred to the customer in a form or
30 quantity capable of a fixed or definite sales price.

31 2. EXAMPLE: A person engaged in lawn mowing service
32 may purchase fertilizer for resale tax exempt where the
33 person makes a separate charge for the fertilizer to the
34 consumer, since the fertilizer is transferred to the
35 customer in a form or quantity capable of a fixed or
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1 definite sales price.

2 (4) Tangible personal property which is not sold in the
3 manner set forth in subsection (3) is not purchased for
4 resale and is subject to tax at the time of purchase by a
5 person engaged in the performance of a service. Such
6 tangible personal property is considered to be consumed by
7 the person who is engaged in the performance of a service.
8 The subsequent sale of service is subject to tax on the
9 entire sales price, even though the previously taxed
10 tangible personal property is included in the transaction.

11 (a) EXAMPLE: A car wash company purchases electricity,
12 gas, soaps, and solvents to use in washing cars. The car
13 wash company would be the consumer of the electricity, gas,
14 soap and solvents and tax is due at the time of purchase.
15 The items purchased by the car wash company are not
16 transferred to the customer in a form or quantity capable of
17 a fixed or definite sales price, nor in a quantity typically
18 associated with sales of soap, solvents, etc., and the
19 customer is not separately billed for the items.

20 (b) EXAMPLE: A law firm purchases word processing
21 equipment, paper, ribbons and other supplies for use in
22 providing or performing its services. The law firm would be
23 the consumer of the word processing equipment, paper,
24 ribbons and supplies it uses. Such tangible personal
25 property is considered to be consumed by the law firm. It
26 is not transferred to the customer in the same form or
27 quantity as purchased by the law firm.

28 (5) Materials, containers, labels, sacks or bags
29 intended to be used one time only exclusively for packaging
30 materials in the process of providing a taxable service are
31 exempt, provided such items accompany the service product to
32 the final buyer without which delivery of the services
33 product is impracticable on account of the character of the
34 contents and for which there is no separate charge.

35 (a) EXAMPLE: A dry cleaner purchases plastic bags and
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1 hangers. These bags and hangers are placed on the items
2 cleaned and are given to the customer. These plastic bags
3 and hangers would not be subject to tax at the time of
4 purchase by the dry cleaner, provided they are used one time
5 only and such items are transferred to the customer in
6 conjunction with the performance of the service.

7 (b) EXAMPLE: A sanitary service provider purchases
8 plastic bags. These plastic bags are given to the customer
9 for garbage and refuse collection and disposal. These
10 plastic bags would not be subject to tax at the time of
11 purchase by the provider sanitary service, provided they are
12 intended to be used one time only and are transferred to the
13 customer in conjunction with the performance of the
14 service.

15 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
16 Chapter 87-6 Laws of Florida.

17 Law Implemented Sections 2 and 7, Chapter 87-6, Laws of
18 Florida.

19 History - New 7-1-87.
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2 12-ER-87-6 Registration.

3 (1)(a) Every person desiring to engage in the business
4 of selling, providing, or performing a service in this state
5 that is subject to the tax on the sale or use of services
6 shall file with the Department an Application for
7 Certificate of Registration (DR-1), incorporated by
8 reference in Rule 12A-1.097(1), F.A.C. A separate
9 Application for Registration (DR-1) shall be filed for each
10 place of business or location. Each application shall be
11 made to the Department before the service provider may
12 engage in business, and shall be accompanied by a
13 registration fee of \$5.00. The Department, upon receipt of
14 such application will grant to the applicant a separate
15 Certificate of Registration (DR-11T) for each place of
16 business. Engaging in the business of selling of services
17 without first obtaining a Certificate of Registration
18 (DR-11T) or after such certificate has been canceled by the
19 Department is prohibited. The failure or refusal of any
20 person to register as a dealer is a misdemeanor of the
21 second degree, punishable as provided in s. 775.082, F.S.,
22 s. 775.083, F.S., or s. 775.084, F.S., or subject to
23 injunctive proceeding as provided by law.

24 (b) No person selling, providing, or performing a
25 taxable service in Florida shall be issued any license from
26 any authority within the State of Florida to engage in
27 business unless such person is the holder of a valid
28 Certificate of Registration (DR-11T).

29 (c) Applications for Registration (DR-1) are available,
30 without cost, upon written request directed to the
31 Department of Revenue, Supply Section, Tallahassee, Florida
32 32399-0100.

33
34 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
35 Chapter 87-6 Laws of Florida.

Law Implemented Section 21, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

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2 12-ER-87-7 Remittance of Tax; Penalties; Interest;
3 Estimated Taxes; Quarterly Filing.

4 (1) The service provider shall charge, collect and
5 remit the sales and use tax on services except as provided
6 in Rule 12-ER-87-2(1)(b). If a service is used in Florida
7 and the service provider fails to collect and remit the tax,
8 the purchaser of the service shall remit the use tax on
9 services.

10 ~~(2) The provisions of this section shall not apply to~~
11 ~~construction services or advertising services.~~

12 ~~(3) Multistate businesses are not required to collect~~
13 ~~the use tax on services they sell.~~

14 ~~See 12-ER-87-3, 12-ER-87-() and 12-ER-87-().~~

15 (2)(a) The sales and use tax on services is in
16 addition to the total amount of the consideration for
17 services, including all other fees and taxes levied, and
18 shall be separately stated as Florida tax on any charge
19 ticket, sales slip, invoice or other tangible evidence of
20 sale. However, where it is impractical, due to the nature
21 of the business practice within an industry, to separately
22 state the tax, the Department may establish an effective tax
23 rate for such industry.

24 (b) Notwithstanding the rate of tax imposed upon the
25 sale or use of services, the following brackets shall be
26 applicable to all taxable service transactions:

27 1. On single sales of less than 10 cents, no tax shall
28 be added;

29 2. On single sales in amounts from 10 cents to 20
30 cents, both inclusive, 1 cent shall be added for taxes;

31 3. On sales in amounts from 21 cents to 40 cents, both
32 inclusive, 2 cents shall be added for taxes;

33 4. On sales in amounts from 41 cents to 60 cents, both
34 inclusive, 3 cents shall be added for taxes;

1 5. On sales in amounts from 61 cents to 80 cents, both
2 inclusive, 4 cents shall be added for taxes;

3 6. On sales in amounts from 81 cents to \$1, both
4 inclusive, 5 cents shall be added for taxes; and

5 7. On sales in amounts of more than \$1, 5 percent
6 shall be charged upon each dollar of price, plus the above
7 bracket charges upon any fractional part of a dollar.

8 (c) The sales and use tax on services shall be due and
9 payable at the time of the sale or use of the service unless
10 the ~~dealer service provider, who is a person primarily~~
11 ~~engaged in the business of selling services~~ other than a
12 provider of construction services, elects to ascertain the
13 amount of tax payable on the basis of tax receipts on all
14 taxable service transactions ~~remit the tax on a service at~~
15 ~~the time consideration is paid for such service and on the~~
16 ~~amount of consideration paid.~~ If such election is made, it
17 shall be applicable to all taxable service transactions of
18 such dealer. This election is available only to businesses
19 which are primarily providers of services.

20 1. A ~~dealer service provider, who is a person~~
21 ~~primarily engaged in the business of selling services~~
22 electing to ascertain the amount of tax payable on the basis
23 of tax receipts on all taxable service transactions
24 ~~remit the tax on a service at the time the consideration is~~
25 ~~paid for a service and on the amount of consideration paid~~
26 shall make his election request in writing setting out the
27 trade name of his business, mailing address, the dealer's
28 certificate of registration number assigned by the
29 Department, the effective month of the election, ~~and the~~
30 ~~reason the election is requested.~~ The request must be
31 addressed to the Department of Revenue, Carlton Building,
32 Tallahassee, Florida 32399-0100. All requests must be
33 received by the Department before the tax return for which
34 the election is made becomes delinquent. Alternatively, the
35 election may be made by completing the relevant portion of
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1 DR-1EP. If such election is made, it shall be applicable to
2 all taxable service transactions of such dealer for a
3 minimum of 12 consecutive months. Every dealer, who is a
4 person primarily engaged in the business of selling
5 services, electing to ascertain the amount of tax payable on
6 the basis of tax receipts shall renew such election every
7 five (5) years from the date of the initial election. The
8 department will review each election renewal to ensure that
9 the dealer is still primarily engaged in the business of
10 selling services.

11 2. A ~~dealer service provider, who is a person~~
12 primarily engaged in the business of selling services making
13 an election to ascertain the amount of tax payable on the
14 basis of tax receipts on all taxable service transactions
15 ~~remit the tax on a service at the time the consideration is~~
16 ~~paid for a service and on the amount of the consideration~~
17 ~~paid~~ may change his election and remit the tax on an accrual
18 basis by a written request setting out the trade name of the
19 business, mailing address, the dealer's certificate of
20 registration number assigned by the Department, and the
21 effective month of the election change, ~~and the reason the~~
22 ~~election change is requested.~~ The request must be addressed
23 to the Department of Revenue, Carlton Building, Tallahassee,
24 Florida 32399-0100. All requests must be received by the
25 Department before the tax return for which the change in
26 election is made becomes delinquent. If such election to
27 change is made, it shall be applicable to all taxable
28 service transactions of such dealer for a minimum of 12
29 consecutive months.

30 (3*) If a transaction involves both the sale or use of
31 services and the sale or use of tangible personal property,
32 and the tangible personal property is not an inconsequential
33 element of the transaction, the sales and use tax on
34 services shall be due and payable at the time of the sale or
35 use regardless of the time consideration is paid for such
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1 services, and the provisions of (2)(c) shall not be
2 applicable.

3 (4~~5~~) All taxes shall for each month be due the
4 Department on the first day of the month following the date
5 of sale or transaction and shall be delinquent on the
6 twenty-first day of each month; however, when a service
7 provider elects to remit the tax on a service at the time
8 consideration is paid for services and on the amount of
9 consideration, such taxes shall for each month be due the
10 Department on the first day of the month following the date
11 the consideration for the service is paid and shall be
12 delinquent on the twenty-first day of each month. Taxes due
13 in any given month must either reach the office of the
14 Department or be postmarked on or before the 20th day of the
15 month following the date of sale, or of the month following
16 the date the consideration for the service is paid the
17 service provider if the election is made to remit tax in
18 such a manner, to be entitled to the collection allowance
19 and to avoid penalty and interest for late filing. In those
20 cases where the 20th day falls on Saturday, Sunday or a
21 federal or state legal holiday, returns shall be accepted as
22 timely filed if postmarked or delivered to the Department on
23 the next succeeding day which is not a Saturday, Sunday, or
24 legal holiday. For this purpose, a legal holiday shall mean
25 holidays observed by federal or state agencies.

26 (5~~6~~) As compensation for the keeping of prescribed
27 records, accounting for and remitting the tax, dealers are
28 allowed a collection allowance. The dealer's collection
29 allowance shall be computed at the rate of 3% on the first
30 \$1,000 of tax and 1% for all amounts in excess of \$1,000 for
31 the dealer's reporting period. The collection allowance
32 shall not be allowed if the tax is delinquent at the time of
33 payment or where there is a manifest failure to maintain
34 proper records or make proper prescribed reports.
35 Furthermore, the collection allowance may be reduced by 10%

1 or \$50, whichever is less, if a dealer files an incomplete
2 return. An "incomplete return" means a return which is
3 lacking such uniformity, completeness, and arrangement that
4 the physical handling, verification, or review may not be
5 readily accomplished, including but not limited to, the
6 failure to provide the amount of gross sales, exempt sales,
7 taxable sales, tax collected or due, lawful refunds,
8 deductions, or credits claimed, dealer's collection
9 allowance, penalty, interest, and total tax due with the
10 return.

11 (67) A tax return on forms provided by the Department
12 of Revenue shall be filed by the 20th day of each month,
13 whether or not any taxes are due, by all persons required
14 under Chapter 212, F.S., to file returns except in those
15 instances where the Department of Revenue has specifically
16 granted permission to file returns on some other basis. Tax
17 returns shall be filed and taxes paid to the Department of
18 Revenue at Tallahassee or to designated offices throughout
19 the state. Any person or any duly authorized corporation
20 officer or agent, members of any firm or incorporated
21 society or organization who refuses to make a return and pay
22 the taxes due shall, upon conviction, be deemed guilty of a
23 misdemeanor. Multistate purchasers of services subject to
24 tax on an apportioned basis are required to annually file a
25 Supplemental Sales Tax Return for Exempt Purchase Permit
26 Holders (DR-15SUP). See Rule 12-ER-87-2(2)(b)4.a.

27 (78) The Department is not authorized to extend the
28 time for any dealer under Part I, Chapter 212, F.S., to make
29 any return or pay any tax. Any dealer or other person who
30 fails to make a return and pay the tax due, on or before the
31 due date, is liable for penalties, interest and loss of
32 collection allowance, regardless of any particular problems
33 encountered in assembling the necessary data for filing a
34 return and paying the tax.

35 (89)(a) Interest shall accrue on any delinquent sales
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1 or use tax at the rate of 1% per month (pro-rated daily) of
2 the amount due from the date of delinquency until the date
3 on which the tax is paid.

4 (b) However, the Executive Director of the Department
5 of Revenue may waive interest for taxes due and payable on
6 newly imposed services for the period ~~from between~~ July 1,
7 1987, ~~through and~~ September 30, 1987, if ~~it is he~~
8 ~~determined~~ that the interest will cause an undue hardship
9 on the taxpayer. Requests for waivers ~~This~~ will be reviewed
10 on a case by case basis.

11 (~~910~~) (a) When any dealer or other person required to
12 do so under Part I, Chapter 212, F.S., shall fail to make a
13 return or pay the taxes due within the time required, a
14 delinquent penalty shall be added to the tax in the amount
15 of 5% if the failure is for not more than 30 days, with an
16 additional 5% delinquent penalty for each additional 30
17 days, or fraction thereof, during the time the failure
18 continues, not to exceed, however, a total delinquent
19 penalty of 25% in the aggregate.

20 (b) However, the Executive Director of the Department
21 of Revenue shall waive delinquent penalties for returns for
22 taxes due and payable on newly imposed services for the
23 period between July 1, 1987, and September 30, 1987.

24 (~~101~~) The estimated tax filing requirements imposed by
25 s. 212.11(1), F.S., shall not apply to any dealer who is
26 required to first remit taxes to the Department on or after
27 July 1, 1987.

28 (~~112~~) Beginning October 1, 1987 instead of 12 monthly
29 reporting periods the department may authorize a quarterly
30 return and payment for dealers collecting tax solely from
31 the provision of services, when the tax remitted by the
32 dealer for the preceding quarter was less than \$500 in each
33 month.

34 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
35 Chapter 87-6 Laws of Florida.

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Law Implemented Sections 1, 2, 16, 17 and 36, Chapter 87-6,
Laws of Florida.
History - New 7-1-87.

12-ER-87-8 **Transition Rule.**

(1) When a service that is taxable beginning July 1, 1987, is provided prior to July 1, 1987, it shall not be taxed, notwithstanding that compensation for the service was paid or payable on or after July 1, 1987.

(2) When a service that is taxable beginning July 1, 1987, is provided on or after July 1, 1987, the service shall be taxed unless it was prepaid in full prior to April 1, 1987.

(3) When a service that is taxable beginning on July 1, 1987, is provided over a period of time beginning prior to ~~July 1, 1987~~, and ending after July 1, 1987, the service shall be taxed only upon that portion of the service provided on or after July 1, 1987.

(4) For purposes of this rule, a service shall be deemed prepaid in full if payment for the service is pursuant to a finance agreement and such agreement was sold by the service provider to a third party prior to April 1, 1987.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Section 37, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

2 12-ER-87-9 Bad Debts And Return Payments For
3 Services.

4 (1) A dealer who has paid taxes on the sale of services
5 may take credit or obtain a refund for any tax paid by him
6 on the unpaid balance due on worthless accounts within 12
7 months following the month in which the bad debt was charged
8 off for federal income tax purposes. If an account so
9 charged off is thereafter in whole or in part paid to the
10 dealer, the amount so paid shall be included in the first
11 return filed after such collection and the tax paid
12 accordingly.

13 (2) When any sale of a service, upon which a tax has
14 been paid to the dealer by the purchaser is cancelled and
15 the sales price of the service is refunded to the purchaser
16 the dealer shall also refund to the purchaser the tax paid
17 by the purchaser. If in lieu of a refund of the sales
18 price, the dealer credits such amount on the purchaser's
19 account, a corresponding credit for sales tax previously
20 paid by the customer shall be made.

21 (3) Any dealer who refunds taxes paid to any purchaser
22 for which he later claims a credit or refund shall keep
23 internal records to support such transactions.

24 (4) When any dealer refunds the tax paid by a
25 purchaser, the department will refund such tax if
26 application therefore is made in writing within 36 months
27 from the date of payment to the state. The Application For
28 Refund (DR-26), must state in clear and convincing terms the
29 grounds for a refund.

30 (5) Any dealer who is entitled to a refund of taxes
31 paid to the department may in lieu of applying for a refund,
32 take credit for such a month on any subsequent report filed
33 within 36 months of the date on which the dealer remitted
34 the tax to the state.

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(6) Whenever a dealer credits a customer with tax on cancelled sales of services, he must refund such tax to his customer before his claim to the state for credit or refund will be approved.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Section 20, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

2 12-ER-87-10 Sales Between Related Entities.

3 (1) Services of Partners to Partnerships. - The tax on
4 the sale or use of services does not apply to services that
5 partners who are either natural persons or professional
6 corporations render exclusively to their partnerships.
7 unless the partner renders such services to the partnership
8 in the capacity of an independent contractor. Accordingly,
9 services rendered exclusively to a partnership by a
10 corporate partner that is not a professional corporation are
11 not exempt whether or not such services are rendered by the
12 corporate partner as an independent contractor.

13 (a) Example: Brown, an attorney who is also a
14 Certified Public Accountant, is a member of a partnership of
15 attorneys. He and other partners provide services for the
16 partnership, none of which is taxable, although services of
17 the partnership to clients are taxable. The partnership
18 needs a C.P.A. to set up its books and records and to
19 instruct its employees in maintaining them; and engages the
20 services of Brown, as a C.P.A., to do so and to receive a
21 fee from the partnership apart from his share as a partner
22 in the earnings of the partnership. Those services are
23 provided by Brown to the partnership in his capacity as an
24 independent contractor, and are not exempt.

25 (b) Example: Green, Black, and White are architects,
26 each of whom has incorporated his practice as a professional
27 corporation. Their corporations form a partnership of
28 architects. Since the partners are professional
29 corporations, the services rendered by each corporation to
30 the partnership are exempt, but only to the extent that such
31 services are rendered exclusively to the partnership in a
32 capacity other than as an independent contractor.

33 (c) Example: Corporations X and Y, neither of which is
34 a professional corporation within the meaning of
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1 12-ER-87-10(1), form a partnership for the production of
2 items of tangible personal property. Corporation X (the
3 capital partner) contributes capital or property other than
4 money in exchange for its partnership interest. Corporation
5 Y (the service partner) receives its partnership interest in
6 exchange solely for its services. Corporation X provides
7 services to the partnership in its capacity as an
8 independent contractor and is compensated for such services
9 separately and apart from its share of profits. Corporation
10 Y is not separately compensated for its services. The
11 partners receive periodic cash distributions of profits
12 and/or operating cash flow. Periodically, the partnership
13 also reimburses the partners for expenses advanced for the
14 operation of the partnership. Payments by the partnership
15 to Corporation X which are not paid for services rendered by
16 X, whether such payments are made in the form of
17 distributions of profits, cash flow distributions,
18 reimbursements of expenses advanced by the partner on behalf
19 of the partnership, or otherwise, do not constitute amounts
20 paid for services within the meaning of s. 212.02(21), F.S.
21 Therefore, such payments made to Corporation X are exempt
22 from the tax on services. Any payments made by the
23 partnership to Corporation Y for any purpose other than for
24 the reimbursement of expenses or capital, however, are not
25 exempt from the tax on services whether such taxable
26 payments are characterized under the terms of the
27 partnership agreement as other types of payments such as
28 guaranteed or percentage payments of profits. Payments made
29 other than for services must be separately identified and
30 their exemption or nontaxability established to the
31 satisfaction of the Department based upon all of the facts
32 and circumstances surrounding such payments rather than the
33 form in which such payments are cast. For instance,
34 payments made to Y in excess of the adjusted basis of Y's
35 partnership interest for purposes of federal income tax

1 shall be deemed to be payments for services unless the
2 exemption or nontaxability of such payments are established
3 to the satisfaction of the Department. Similarly, payments
4 made to X in excess of the adjusted basis of its partnership
5 interest shall be deemed to be payments for services if such
6 payments either: exceed X's percentage interest in
7 partnership profits or losses; or the separate payments to X
8 for its services as an independent contractor are less than
9 the sales price for such services.

10 (2) Services Performed Between Members of an Affiliated
11 Group of Corporations.-

12 (a) Services between members of an affiliated group of
13 corporations as defined in s. 1504(a) of the Internal
14 Revenue Code, whose members are includable under ss.
15 1504(b), (c) or (d) of the Internal Revenue Code and are
16 eligible to file a consolidated return for federal income
17 tax purposes, or mutual insurance companies which are
18 members of one insurance holding company system subject to
19 s. 628.801, s. 1504(b)(2) of the Internal Revenue Code not
20 being applicable to such mutual insurance companies, are
21 exempt from the tax. However, this exemption shall apply
22 only to the sale or use of services between members
23 of an affiliated group which are included for the purpose
24 of s. 212.0591(9), F.S.

25 (b) If the exemption provided in paragraph (a) is not
26 applicable, the sales price or cost price of the services
27 between members of the affiliated group shall be based upon
28 the fair market value of the service.

29 (c) The sale or use of services between divisions that
30 may be separate taxpayers within the same corporation shall
31 be exempt.

32 (d) Nothing within the provisions of this subsection
33 shall be construed to require the filing of the consolidated
34 return under Chapter 220, F.S., in order to qualify for the
35 exemption.

1 (e) The parent corporation of an affiliated group may
2 elect to define its affiliated group to exclude any member
3 who has no tax nexus in Florida and whose business
4 activities are unrelated to the business activities of the
5 other members of the group.

6 1. The election shall be made by the Election to
7 Exclude Members of an Affiliated Group, Chapter 212, F.S.,
8 (DR-4), dated July 1987, and Exempt Service Purchase Permit
9 for Out-of-State Business and Persons (DR-14P) are
10 available, without cost, upon written request directed to
11 the Department of Revenue, Supply Section, Tallahassee,
12 Florida 32399-0100, on or before the 20th day of the month
13 following the first month in which the taxpayer incurs a tax
14 liability under Chapter 212 after June 30, 1987.

15 2. Such election shall be effective and continue in
16 effect for all calendar months remaining in the taxpayer's
17 taxable year determined under Chapter 220, F.S.

18 3. An amendment to such election may be made for each
19 subsequent taxable year by filing The Election to Exclude
20 Members of an Affiliated Group, Chapter 212, F.S., (DR-4) on
21 or before the 20th day of the month following the first
22 calendar month in any subsequent taxable year and shall be
23 effective and remain in effect for all calendar months of
24 such subsequent taxable years.

25 4. Any such election properly made for any taxable
26 year shall continue in effect for all subsequent taxable
27 years unless and until altered or revoked by timely filing
28 an amendment as herein provided.

29 5. In no event shall the parent corporation of an
30 included member be excluded from the affiliated group.

31 6. If a member is excluded by this election then the
32 sales of services between such excluded members and other
33 members are taxable.

34 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
35 Chapter 87-6 Laws of Florida.

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Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
Florida Section _____, Chapter 87-____, Laws of Florida.
History - New 7-1-87.

2 12-ER-87-11 Exemptions from Tax on Sales or Use of
3 Services. Rules promulgated by the Department of Revenue
4 cannot be construed to extend exemptions beyond the scope of
5 those intended by the statutes. Reference to "SIC" in this
6 rule and in the statutory provisions on which this rule is
7 based refer to classification in the Standard Industrial
8 Classification Manual, 1972, as published by the Office of
9 management and Budget, Executive Office of the President,
10 and as amended in the 1977 Supplement. Unless a provision
11 of Part I of Chapter 212, F.S., clearly provides otherwise,
12 references to the SIC Code are intended to describe
13 activities or services and not establishments. Such
14 references shall not be construed to tax or exempt a service
15 solely because it is performed by a person in a referenced
16 establishment. Neither shall such references be construed
17 to preclude taxation or an exemption for a service solely
18 because it is performed by a person not in a referenced
19 establishment. No exemption from the sales and use tax on
20 services shall be deemed to exempt transactions that were
21 subject to taxation pursuant to other provisions of Part I
22 of Chapter 212, F.S., on January 1, 1987.

1 (1) Occasional or Isolated Sales. - The tax on sale
2 or use of services does not apply to the occasional or
3 isolated sale of services by a person who does not hold
4 himself out as engaged in business or to the use of services
5 purchased in a transaction that is an isolated sale.

6 Example: Smith, a retired automobile mechanic, occasionally
7 repairs automobiles for friends, for which he charges less
8 than they would have to pay elsewhere. His services are
9 exempt as occasional or isolated sales of services by a
10 person who does not hold himself out as engaged in business.
11 Later, he decides to improve his finances, and tells his
12 friends and acquaintances that he will accept work from the
13 general public, and places notices on bulletin boards
14 advertising his services. His services are no longer exempt
15 as occasional or isolated sales of services by a person who
16 does not hold himself out as engaged in business.

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1 (2)(a) **Employee Services.** - Services by employees to
2 their employers are exempt.

3 (b) In determining whether a person is an employee, the
4 department will consider the following indicia:

5 1. Whether ~~is~~ the person is paid a wage or ~~of~~
6 salary. ↗

7 2. Whether ~~is~~ the "employer" is required to withhold
8 income tax from the person's wage or salary. ↗

9 3. Whether ~~is~~ F.I.C.A. tax is required to be paid by
10 the "employer". ↗

11 4. Whether ~~is~~ the "employer" is required to make
12 unemployment insurance contributions on behalf of the
13 person?

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15 However, if all of the indicia mentioned above are present,
16 the person is nevertheless not an employee if he is acting
17 in the capacity of an independent contractor. A person may
18 be an employee even if one or more of the indicia are not
19 present and he is not acting as an independent contractor.

20 Example: B is a carpenter who works for Y. Y pays him
21 \$8.00 per hour. Y withholds income tax from the money he
22 pays B. Y treats B as an employee and controls the details
23 of his work. B is covered by Y's workmen's compensation
24 insurance. B is an employee working for wage or salary.
25 His services are not subject to tax.

26 (c)1. A salesperson who sells for a company on a
27 commission basis is not an employee of the company where the
28 company exercises no direct control over the details of
29 performance of the salesperson's duties beyond general
30 statements about the scope and nature of the salesperson's
31 obligations under the contract between the salesperson and
32 the company. In addition, where commissions paid to a
33 salesperson are not subject to withholding taxes or social
34 security taxes, the salesperson is not considered an
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employee of the company. Therefore, such salesperson's services are subject to tax.

~~2. Notwithstanding the foregoing provision, a "fee sharing" relationship, as defined in s. 212.02(10), F.S., between real estate agents and real estate brokers shall not be considered a "retail sale".~~

23. Example: B sells magazines door to door for X Magazine Company, who solely operates in Florida. X pays B a commission, does not control the details of B's work, is not required by applicable law to make unemployment insurance contributions on B. B is not an employee. B is an independent contractor in business for himself. B's services are taxable. B would be required to register as a dealer, to collect the tax from the magazine company, and to remit same to the state.

1 (3) Agricultural Services. - Agricultural services
2 described in paragraph (a) are exempt from the tax on the
3 sale or use of services, but those described in paragraphs
4 (b), (c), and (d) are not exempt as agricultural services.

5 (a) Agricultural services enumerated in SIC Major Group
6 07, including:

7 1. Soil preparation services in land breaking,
8 plowing, application of fertilizer, seed bed preparation,
9 and other operations for improving the soil, including, but
10 not limited to chemical treatment of soil; fertilizer
11 application; lime spreading; plowing; seed bed preparation;
12 and weed control, before planting.

13 2. Crop planting, cultivation, and protection,
14 including aerial dusting and spraying; bracing of orchard
15 trees and vines; citrus grove cultivation; mechanical and
16 flame cultivation; cultivation of sprouts, twigs, etc.;
17 detasselling of corn; disease control for crops, with or
18 without fertilizing; dusting crops, with or without
19 fertilizing; entomological service; hoeing; insect control
20 for crops, with or without fertilizing; planting, with or
21 without fertilizing; pollinating; pruning of orchard trees
22 and vines; seeding crops, with or without fertilizing;
23 seeding of sprouts, twigs, etc.; spraying crops, with or
24 without fertilizing; surgery on orchard trees and vines;
25 thinning of crops, mechanical and chemical; weed control
26 after planting; and irrigation system operation service of
27 both systems providing and those not providing water.

28 3. Crop harvesting, primarily by machine, including
29 machine harvesting of berries, cotton, fruits, vegetables,
30 grain, peanuts, sugarcane, tree nuts; chopping and silo
31 filling; combining; hay mowing, raking, baling, and
32 chopping; and threshing.

33 4. Crop preparation for market services, including
34 bean cleaning; corn shelling; cotton ginning; cotton seed
35 delinting; drying of corn, rice, hay, fruits, and
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1 vegetables; flax decorticating and retting; fruit
2 precooling, not in connection with transportation; grain
3 cleaning; custom grain grinding; hay baling; moss ginning;
4 packaging fresh or farm-dried fruits and vegetables; potato
5 curing; sorting; grading, and packing of fruits and
6 vegetables; sweet potato curing; tobacco grading; tree nut
7 hulling and shelling; and vegetable precooling, not in
8 connection with transportation.

9 5. Veterinary services provided by licensed
10 practitioners of veterinary medicine, dentistry, or surgery,
11 for cattle, hogs, sheep, goats, poultry, pets and other
12 animal specialties; also including animal hospitals.

13 6. Livestock services, except for services for animal
14 specialties (as to which, see subparagraph 7., below, and
15 paragraph (d)), including only artificial insemination;
16 breeding of livestock, except animal specialties (see
17 paragraph 7.); catching poultry, with no hauling; cattle
18 spraying; cleaning poultry coops; dairy herd improvement
19 associations; milk testing, for butterfat, etc.; pedigree
20 record services for cattle, hogs, sheep, goats, and poultry;
21 sheep dipping and shearing; showing of cattle, hogs, sheep,
22 goats, and poultry; custom slaughtering for individuals; and
23 vaccinating livestock.

24 7. Animal specialty services that relate to
25 "agricultural products "as defined in s. 618.01(1), Florida
26 Statutes, as follows:

27 "618.01 Definitions

28 "In construing this chapter, where the context permits,
29 the word, phrase, or term:

30 "(1) "Agricultural products" shall include
31 horticultural, viticultural, forestry, aquatic, dairy,
32 livestock, poultry, bee, and any farm products;"
33 Animal specialty services not qualifying for the exemption
34 include such services as veterinary boarding kennels;
35 breeding of animals; other than veterinary for cattle, hogs,
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1 sheep, goats and poultry; dog grooming; honey straining (on
2 the farm); pedigree record services; showing of pets and
3 other animal specialities; training of pets and other animal
4 specialities; and vaccinating pets and other animal
5 specialities, except by veterinarians.

6 8. Farm labor and management services, which supply
7 labor for agricultural production or harvesting, or provide
8 farm management services, including crew leaders for farm
9 labor on a contract basis; farm labor contractors; citrus
10 grove management and maintenance, with or without crop
11 services; farm management services; orchard management and
12 maintenance, with or without crop services; and vineyard
13 management and maintenance, with or without crop services.

14 9. General crop services; that is, a combination of
15 services from soil preparation through harvest.

16 (b) Not exempt as agricultural services are landscape
17 and horticultural services enumerated in SIC Group Number
18 078, which include:

19 1. Landscape counseling and planning, including garden
20 planning; horticultural advisory or counseling services;
21 landscape architects; landscape counseling; and landscape
22 planning.

23 2. Lawn and garden service, including Bermuda
24 sprigging; cemetery upkeep, independent; garden maintenance;
25 garden planning; lawn care; lawn fertilizing; lawn mowing;
26 lawn spraying; lawn sprigging; and mowing highway center
27 strips and edges.

28 3. Ornamental shrub and tree services, including
29 arborist services; ornamental bush planting, pruning,
30 bracing, spraying, and surgery; ornamental tree planting,
31 pruning, bracing, spraying, and surgery; and tree trimming
32 for public utility lines.

33 (c) Animal specialty services enumerated in SIC
34 Industry Number 0752 and described in subparagraph 7. of
35 paragraph (a) are not exempt unless they ~~when they do not~~

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1 relate to agricultural products, as defined in that
2 subparagraph.

3 (d) Veterinary services performed by licensed
4 practitioners primarily engaged in the practice of
5 veterinary medicine, dentistry, or surgery are exempt
6 whether they relate to agricultural products. However,
7 where a licensed veterinarian provides a service that can
8 legally be provided by one who is not a licensed
9 veterinarian for animals not his own nor owned by his
10 employer and that, when performed by such an individual
11 is not exempt, the veterinarian's performing it does not
12 make it exempt.

13 1. Example: A licensed veterinarian keeps a pet dog
14 in his kennel ("animal hospital") over a period of days
15 while performing veterinary services on the animal that can
16 only be legally performed by a licensed veterinarian, and is
17 compensated for these kennel services, in addition to
18 veterinarian fees. The kennel services would be exempt as
19 incident to the veterinary services.

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21 2. Example: The above veterinarian has excess
22 capacity in his kennel, and the owner of a pet dog prevails
23 upon him to board the dog in the kennel while the owner is
24 away from the city, for a charge, without providing
25 veterinarian services. This service would be taxable,
26 since: the service is not a veterinary service; it could be
27 legally provided by anyone who is not a licensed
28 veterinary; and as an animal specialty service, it is not
29 related to an agricultural product.

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1 (4) ~~Transportation and Warehousing Services for~~
2 Specified Types of Cargo. - The tax on sale or use of
3 services does not apply to transportation ~~and warehousing~~
4 services described in paragraph (a) for cargo described in
5 paragraphs ~~(b) through and (g)~~ of this subsection.

6 (a) The services to which this exemption applies are
7 transportation ~~and warehousing~~ services enumerated in SIC
8 Major Group Numbers ~~40, 44, 45, and 47 on pages 220,~~
9 ~~224, 225, 226, 228, 229, 230, 231, 233, and 234~~ of the
10 Standard Industrial Classification Manual. These include:

11 ~~1. Rail transportation, such as railroad~~
12 ~~transportation, and switching and terminal services;~~

13 ~~2. Motor freight transportation and warehousing, such~~
14 ~~as local trucking with or without storage, long distance or~~
15 ~~over the road" trucking and other trucking that is not~~
16 ~~local, farm product warehousing and storage, refrigerated~~
17 ~~warehousing, and terminal service for motor freight~~
18 ~~transportation (See Rule 12-ER-87-11(17));~~

19 ~~19. Water transportation that is not generally exempt~~
20 ~~under subsection (19), such as deep sea domestic~~
21 ~~transportation, coastwise and intercoastal transportation,~~
22 ~~rivers and canals and bays and sounds of the ocean, ferries~~
23 ~~and other transportation, local water transportation; and~~
24 ~~miscellaneous water transportation services, incidental~~
25 ~~to water transportation (See Rule 12-ER-87-11(19));~~

26 ~~24. Air Transportation by both certificated and~~
27 ~~noncertificated carriers, and facilities services and~~
28 ~~services related to air transportation (See Rule~~
29 ~~12-ER-87-34(b)); and~~

30 ~~35. Miscellaneous transportation services not~~
31 ~~otherwise exempt under subsections (17), (18), (19), and~~
32 ~~(37), such as freight forwarding, arrangement of~~
33 ~~transportation, rental of railroad cars.~~

34 (b) Agricultural commodities. ~~The transportation and~~
35 ~~warehousing services enumerated in paragraph (a), above, for~~

1 ~~agricultural commodities are exempt.~~ For purposes of this
2 exemption, goods that were originally agricultural
3 commodities cease being such when they no longer retain
4 their original identity, such as after they are processed,
5 packaged in cans, or frozen.

6 1. Example: Cotton is ginned and baled. It is still
7 cotton, and retains its original identity.

8 2. Example: Baled cotton is made into thread, in
9 preparation for making cotton cloth. It has acquired a new
10 identity; something different has emerged. It is no longer
11 cotton, an agricultural commodity the transportation or
12 warehousing of which is exempt. It is now thread, which is
13 not an agricultural commodity.

14 (c) ~~The transportation and warehousing services~~
15 ~~enumerated in paragraph (a), above, are exempt when provided~~
16 ~~for phosphate rock as defined in s. 211.30(9), Florida~~
17 ~~Statutes as follows: potash, as described in SIC Industry~~
18 ~~Number 1474, sulfur as described in SIC Industry Number~~
19 ~~1477, nitrogenous fertilizers as enumerated in SIC Industry~~
20 ~~Number 2873, and phosphatic fertilizers as enumerated in SIC~~
21 ~~Industry Number 2874. S. 211.30(9) and the references in~~
22 ~~the Standard Industrial Code Manual to these Industry~~
23 ~~Numbers are reproduced below.~~

24 ~~Section 211.30(9), Florida Statutes:~~

25 "(9) 'Phosphate rock' means a variable mixture of
26 calcium phosphates and other minerals that have fluorapatite
27 as the dominant phosphatic mineral, found in bedded deposits
28 of marine origin. This term includes the forms of
29 land-pebble and river-pebble phosphates and the phosphate
30 concentrates derived from beneficiation of these forms.
31 This term does not include colloidal phosphatic clays."

32 ~~Excerpts from pp. 42 and 124, Standard Industrial~~
33 ~~Classification Manual:~~

34 ~~Group Industry~~
35 ~~Number Number~~

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~~CHEMICAL AND FERTILIZER MINERAL MINING-Continued~~

~~1474 Potash, Soda, and Borate Minerals~~

~~Services related to and for the purpose of mining, milling, or otherwise preparing natural potassium, sodium, or boron compounds (other than common salt).~~

~~Alum (natural) mining~~

~~Borate compounds (natural) mining~~

~~Borax, crude, ground and pulverized~~

~~Borax mining~~

~~Boron mineral mining~~

~~Colemanite mining~~

~~Glauber's salt mining~~

~~Kernite mining~~

~~Potash mining~~

~~Potassium compounds (natural) mining~~

~~Salines (except common salt) mining~~

~~Soda ash (natural) mining~~

~~Sodium compounds, natural (except common salt)~~

~~mining~~

~~Trona mining~~

~~Ulexite mining~~

(d) Potash, (t)The dictionary definition of which potash

is, "Any substance containing potassium; especially, salts derived from natural brines, distillery waste, flue dusts of blast furnaces, etc. whose potassium content is expressed in terms of K2O: used in fertilizer, soaps, etc."

~~1477 Sulfur~~

~~Services related to and for the purpose of mining native sulfur, including the extraction of native sulfur at well operations, and mining and beneficiating sulfur ore. Services involving mining, preparing to mine, or concentrating pyrites are classified in industry 1479.~~

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~~Brimstone mining~~
~~Sulfur (native) mining~~

(e) Sulfur, the (tThe dictionary definition of which sulfur is, "A pale-yellow, nonmetallic chemical element found in crystalline or amorphous form: it burns with a blue flame and a stifling odor and is used in vulcanizing rubber, making matches, paper, gunpowder, insecticides, sulfuric acid, etc."

~~287~~ ~~AGRICULTURAL CHEMICALS-Continued~~
~~2873~~

(f) Nitrogenous fFertilizers, as enumerated in SIC Industry Number 2873, as follows: ~~Services related to and involving "...manufacturing nitrogenous fertilizer materials or mixed fertilizers from nitrogenous materials produced in the same establishment. Included are ammonia fertilizer compounds and anhydrous ammonia, nitric acid, ammonium nitrate, ammonium sulfate and nitrogen solutions, urea, and natural organic fertilizers (except compost) and mixtures.~~

- ~~"Ammonia liquor~~
- ~~"Ammonium nitrate and sulfate~~
- ~~"Anhydrous ammonia~~
- ~~"Aqua ammonia, made in ammonia plants~~
- ~~"Fertilizers: natural (organic), except compost~~
- ~~"Nitric acid~~
- ~~"Nitrogen solutions (fertilizer)~~
- ~~"Plant foods, mixed: made in plants producing nitrogenous fertilizer~~
- ~~"Urea"~~

~~2874~~

(g) Phosphatic fFertilizers, as enumerated in SIC Industry Number 2874, as follows: ~~Services related to and involving "...manufacturing phosphatic fertilizer materials, or mixed fertilizers from~~

1 phosphatic materials produced in the same establishment.
2 Included are phosphoric acid; normal, enriched, and
3 concentrated superphosphates; ammonium phosphates;
4 nitro-phosphates; and calcium meta-phosphates.

5 "Ammonium phosphate

6 "Calcium meta-phosphate

7 "Defluorinated phosphate

8 "Diammonium phosphate

9 "Fertilizers, mixed: made in plants producing
10 phosphatic fertilizer materials

11 "Phosphoric acid

12 "Plant foods, mixed: made in plants producing
13 phosphatic fertilizer

14 "Superphosphates, ammoniated and not ammoniated"

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16 (h) The exemption that is the subject of this
17 subsection is an exemption from the tax on sale or use of
18 services, not an exemption from other taxes that may be
19 applicable. Therefore, the following remain taxable:

20 ~~(d) Some transactions are taxable notwithstanding their~~
21 ~~inclusion in the SIC Major Groups listed in paragraph (a),~~
22 ~~even when the goods transported or warehoused are those~~
23 ~~described in paragraphs (b) and (c). The lease of real or~~
24 ~~tangible personal property is a taxable transaction,~~
25 ~~notwithstanding the exemption provided in s. 212.0592(7)(a),~~
26 ~~F.S., for transportation and warehousing services.~~

27 ~~1. Leasing of warehouse space, such as, but not limited~~
28 ~~to (Industry Number 4222) cold storage locker rental,~~
29 ~~rental of food lockers, and frozen food locker rental, as~~
30 ~~distinguished from providing warehouse service on a bailment~~
31 ~~basis, which was a non-taxable service on January 1, 1987;~~

32 12. Leasing of cargo handling facilities (Industry
33 Number 6512) (as distinguished from services to make such
34 facilities available to those needing cargo handling

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provided by such facilities), such as, but not limited to
(Industry Number 4463) marine cargo handling;

23. Renting or hiring modes of transportation, such as,
but not limited to (Industry Number 4469) renting, hiring,
or chartering of boats or steamship leasing;

34. Rental or leasing of fixed transportation
facilities, such as, but not limited to (Industry Number
4582) airport hangar rental or airport leasing, if operating
airport; or

~~5. Rental of railroad cars for services described in
SIC Industry Numbers 4742 and 4743, provided in conjunction
with rental of railroad cars.~~

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(5) Food or Agricultural Broker Services. -

(a) The tax on sale or use of services does not apply to food or other agricultural broker services for agricultural commodities or agricultural products as defined in s. 618.01, F.S., which section of the Florida Statutes is quoted in subparagraph 7. of subsection (3)(a) of this rule. For purposes of this exemption, a food or other agricultural broker is a person who solicits, negotiates, or arranges for the transfer, transportation, purchase, or sale of agricultural commodities, including both agricultural commodities that retain their original identity and agricultural products meeting the definition in s. 618.01, F.S., whether retaining their original identity. Broker services are exempt whether they relate to food agricultural commodities or products or to non-food agricultural commodities or products.

(b) If a food broker, brokers commodities other than food or agricultural products, such brokerage service is taxable.

1 (6) Forestry Services. - The tax on sale or use of
2 services does not apply to forestry services enumerated in
3 SIC Group 085 and timber cutting, harvesting, estimating, or
4 transportation services enumerated in SIC Group Numbers 241
5 and 242. These Groups are described on pages 29, 90, and 91
6 of the Standard Industrial Classification Manual. The
7 following services are exempt:

8 (a) Forestry services, including cruising and
9 estimating timber; forest fire prevention and fighting;
10 forest management; forest pest control; timber valuation;
11 and reforestation;

12 (b) Logging camp and contractor services, including
13 cutting timber and producing rough, round, hewn, or riven
14 primary forest or wood raw materials; bolts, wood: handle,
15 heading, shingle, stave, etc; booming timber; wood burls;
16 wood croches; driving timber, excelsior stock, hewn; last
17 blocks, wood: hewn or riven; logging camps and logging
18 contractors, not operating sawmills; logs: mine timbers,
19 hewn; peeler logs; pickets and paling; round or split;
20 untreated wood piling; pole cutting contractors; untreated
21 wood poles; hewn, round or split wood posts; pulpwood camps;
22 pulpwood contractors engaged in cutting, not operating pulp
23 mills; fence rails: round or split; saw logs; skidding logs;
24 "stumping" for turpentine or powder manufacturing; stumps;
25 hewn railroad ties; timber (product of logging camps);
26 veneer logs; and hewn wheelstock.

27 (c) Sawmill and planing mill services, including
28 resawed (lumber) cants; dressed ceiling lumber; chipper
29 mills; custom sawmills; softwood cut stock; flitches (veneer
30 stock), made in sawmills; softwood flooring (dressed
31 lumber); fuelwood from mill waste; kiln drying of lumber;
32 lath, made in sawmills and lathmills; logging camps combined
33 with sawmills; lumber, kiln drying of; lumber: rough sawed
34 or planed; lumber stacking or sticking; planing mills,
35 independent: except millwork; planing mills, operated in
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1 conjunction with sawmills; resawing lumber into smaller
2 dimensions; sawdust and shavings; sawmills, except special
3 product mills; dressed lumber siding; sawed wood silo stock;
4 snow fence lath; sawed railroad ties; tobacco hogshead
5 stock; and wood chips manufacturing.

6 (d) Hardwood dimension and flooring mill services,
7 including wood blanks for bowling pins, handles, and textile
8 mach. accessories; wood blocks for bowling pins, handles,
9 and textiles mach. accessories; bobbin blocks and blanks,
10 wood; wood brush blocks: turned and shaped; wood furniture
11 carvings; wood chair frames for upholstered furniture;
12 hardwood chair seats; hardwood dimension; hardwood flooring;
13 wood frames for upholstered furniture; hardwood furniture
14 dimension stock; hardwood furniture squares; wood furniture
15 turnings and carvings; wood gun stocks; wood handle blanks;
16 sawed or planed handle stock; hardwood dimension lumber;
17 hardwood parquet flooring; picker stick blanks; hardwood
18 rounds or rungs, ladder and furniture; hardwood shuttle
19 blocks; wood spool blocks and blanks; hardwood chair
20 stock--turned, shaped, or carved; wood table slides for
21 extension tables; wood furniture turnings; and hardwood
22 vehicle stock.

23 (e) Special product sawmill services, manufacturing and
24 sawing special products including barrel heading and staves,
25 sawed or split; cooperage stock mills; sawed or split
26 cooperage stock: staves, heading, and hoops; excelsior,
27 including pads and wrapper: wood; sawed or split wood hoops
28 for tight or slack cooperage; special product sawmills,
29 except lumber and veneer mills; shakes (hand split
30 shingles); shingle mills; wood shingles, sawed or hand
31 split; wood wool (excelsior); and excelsior wrappers.

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(7) Educational Services. -

(a) Educational services enumerated in SIC Major Group 82 (except those enumerated in Industry Number 8299 excluding those services provided by bible schools) are exempt from the tax on the sale or use of services. Thus exempt are:

1. Elementary and secondary school services below university grade (ordinarily grades 1 through 12), including denominational and sectarian, such as academies, boarding schools, finishing schools, high schools, preparatory schools, kindergartens; military academies; and schools for the handicapped and retarded;

2. Educational services of colleges, universities, professional schools, and junior colleges, such as dental, engineering, law, and medical; theological seminaries; community and junior colleges; and technical institutes.

3. Library services and information center services; such as lending or circulating libraries; rental of books; centers for documentation;

4. Educational services provided by correspondence schools and vocational schools, such as data processing schools, business colleges and schools; schools training in banking; nursing schools; trade schools, including barber colleges and cosmetologist schools; and commercial art schools.

(b) Also specifically exempt by statute from this tax are educational services by any nonprofit religious organizations described in SIC Industry Number 866. These are religious organizations operated for worship or for promotion of religious activities, operated by religious organizations.

(c) Taxable educational services offered by specialized nondegree granting schools enumerated in SIC Industry Number 8299 are:

1. Art schools that are not commercial art schools;

- 1 2. Automobile driving instruction;
- 2 3. Baton instruction;
- 3 4. Ceramic schools;
- 4 5. Charm schools;
- 5 6. Civil service schools; and other short term
- 6 examination preparatory schools;
- 7 7. Diction schools;
- 8 8. Dramatic schools;
- 9 9. Finishing schools (charm and modeling);
- 10 10. Flying instruction;
- 11 11. Hypnosis schools;
- 12 12. Language schools;
- 13 13. Modeling (clothes) schools;
- 14 14. Music schools (except those of educational
- 15 institutions exempt under paragraph (a));
- 16 15. Personal development schools, including seminars,
- 17 ~~convention~~ entrance or participation fees and continuing
- 18 education fees for post-degree courses required for retention
- 19 of professional designations;
- 20 16. Public speaking schools;
- 21 17. Reading schools;
- 22 18. Short term examination preparation schools;
- 23 19. Tutoring schools; and
- 24 20. Vocational counseling (except rehabilitation
- 25 counseling).

26 (d) Services of dancing schools are not exempt as
27 educational services, but, instead, are taxable as
28 recreation services (SIC Industry Number 7911).

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1 (8) Governmental Entity Services. - Governmental Entity
2 Services (except utility or sanitary services) that are
3 enumerated in SIC Major Groups 43 and 91 through 97 are
4 exempt. These Major Groups are described on pages 227 and
5 336 through 345 of the Standard Industrial Classification
6 Manual.

7 (a) Included in these major groups, and thus exempt,
8 are:

9 1. Executive services, such as those of offices of
10 chief executives; city and town managers' offices; Mayors'
11 offices; county commissioners' offices, Governors' office,
12 President's office; and advisory and interdepartmental
13 committees and commissions;

14 2. Legislative bodies, and their advisory and
15 interdepartmental committees and commissions;

16 3. General government support services, such as those
17 which provide personnel, building, auditing, and procurement
18 services;

19 4. Court services;

20 5. Public order and safety services, such as police and
21 fire protection services.

22 6. Public finance, taxation, and monetary policy
23 services, such as those of tax and budget agencies and
24 treasurers' offices;

25 7. Human resources services, such as administration of
26 education, public health, social, manpower, and income
27 maintenance programs, and administration of veterans
28 affairs, except health and insurance.

29 8. Environmental quality and housing programs;

30 9. Economic programs;

31 10. National security and international affairs; and

32 11. U. S. postal service.

33 (b) Services of the Federal Deposit Insurance
34 Corporation and the Federal Savings and Loan Insurance
35 Corporation, though not included in any of the above SIC
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1 Major Groups, are specifically exempt.

2 (c) Utility and sanitary services are specifically
3 excluded from this exemption. However, sanitary services
4 are, under some circumstances, entitled to the exemption
5 described by subsection (20) of this section and
6 under other circumstances are taxable (See Rule
7 12-ER-87-11(20) and 12-ER-87-35, for taxable services.

8 (d) Fees charged by governmental entities for
9 recreation programs are exempt.

10 (e) Services that are taxable if provided by a service
11 provider other than a governmental entity and that are not
12 included in the exempt SIC Major Groups enumerated at the
13 beginning of this subsection are taxable unless exempt on
14 some other basis.

15 ~~Example: A city, in its recreation programs, conducts a~~
16 ~~dancing school, for which a fee is charged. Since this is a~~
17 ~~taxable service that is not included in the exempt SIC Major~~
18 ~~Groups enumerated at the beginning of this subsection, and~~
19 ~~since it is not exempt on another basis, such fees are~~
20 ~~taxable.~~

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1 (9) Financial Services. - Services of a financial
2 nature, which are of a type customarily performed by a
3 financial institution are exempt.

4 (a) For purposes of this exemption, "financial
5 institution" means a financial institution as defined in s.
6 655.005, Florida Statutes; any subsidiary thereof; any
7 holding company, other than a diversified savings and loan
8 holding company as defined in s. 408 of the National Housing
9 Act, which controls a financial institution; ~~and~~ any
10 subsidiary of such holding company; any Federal Reserve
11 Bank and any Federal Home Loan Bank. The definition in s.
12 655.005 F.S., is: "Financial institution means an
13 association, bank, industrial savings bank, trust company,
14 international bank agency or representative office, or
15 credit union."

16 (b) "Financial charges that are, nevertheless, taxable
17 and not exempt are:

- 18 1. Charges for use of safety deposit boxes;
- 19 2. Charges for use of night deposit services;
- 20 3. Charges for issuing cashier's checks;
- 21 4. Charges for issuing traveler's checks;
- 22 5. Charges for issuing money orders;
- 23 6. Charges for preparation of ~~individual~~ tax returns;
- 24 7. Charges for copies of documents;
- 25 8. Stop payment charges;
- 26 9. Return check charges unless due to insufficient
27 funds. Return check charges, as used in this rule, means
28 charges by a financial institution, when the institution
29 ~~bank~~ dishonors (bounces) the check written by the customer;
- 30 10. Charges for service as personal representative of
31 estates of decedents;
- 32 11. Credit information and reporting services;
- 33 12. Overdraft charges. Overdraft charges shall mean
34 fees charged to a customer who overdrafts his account where
35 bank covers the check;
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1 13. ~~Collection fees. Collection fees shall mean fees~~
2 ~~customarily charged by financial institutions~~ Fees for the
3 collection of coupons, drafts, checks, foreign exchange
4 items ~~and~~ similar over-the-counter collection items;
5 ~~and other fees charged for collection services;~~

6 14. Hold mail fees;

7 15. Guardianship fees;

8 16. Credit card and charge card membership fees;

9 17. Cash vault fees; ~~or~~

10 18. Data processing services not otherwise exempt,
11 except check processing and check clearing services for both
12 paper and paperless transactions.

13 19. Financial planning charges which would include
14 charges for retirement planning, estate planning, and the
15 making of long term planning decisions for investments and
16 their financing.

17 Example: A bank prepares financial statements at a
18 customer's request in connection with a loan the customer is
19 seeking from the institution.

20 20. Charges for public accounting services of a type
21 not customarily performed in connection with a customer
22 account.

23 (c) ~~A service by a financial institution the charge for~~
24 ~~which is waived or imputed is not taxable, either because it~~
25 ~~is exempt or because the sale or use of the services is~~
26 ~~outside the scope of the tax on the sale or use of services.~~
27 The tax imposed under s. 212.059 shall not apply to the
28 following services by a financial institution:

29 1. Any service for which the charge is waived or
30 imputed;

31 Example: A bank imposes a charge of \$25 a year for
32 a type of data processing service, but waives the charge for
33 each of its customers who, during the year, maintains a
34 non-interest bearing checking account, the minimum balance
35 in which has not, during the year, fallen below \$1,000.

1 This service, on which the charge was waived is not subject
2 to tax.

3 Example: A bank provides certain services listed in
4 paragraph (b) above, and certain exempt services for
5 preferred customers. As to some customers, the services are
6 performed without charge. As to other customers, at the end
7 of each month, the bank makes an analysis of the actual cost
8 to the bank of maintaining the account and servicing the
9 customer. The cost is then weighed against either the
10 average or minimum balance the customer maintains and a
11 monthly service charge is determined and assessed to the
12 customer based upon the difference between the cost to the
13 bank and the credit against the cost that the customer earns
14 by virtue of the balance maintained. This is an example of
15 an imputed charge; these imputed charges are not subject to
16 tax under this part.

17 2. Investment advisory services when performed by a
18 financial institution are not taxable.

19 (d) The services enumerated in paragraph (b) above
20 shall not be taxable when provided to a non-resident entity
21 or non-resident person as defined in Rule 3C-15.003, Florida
22 Administrative Code (1987).

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(10) Health Services. -

(a) Exempt from the tax on the sale or use of services are health services enumerated in SIC Major Group 80 and health services provided by licensed or certified acupuncturists, respiratory therapists and respiratory therapy technicians, audiologists and speech-language pathologists, physical therapists and physical therapist assistants, opticians, hearing aid specialists, and home health agencies and hospices.

(b) Major Group 80 is on pages 321 through 323 of the Standard Industrial Classification Manual, in which the following services are enumerated:

1. Services of licensed physicians, including clinics or dispensaries operated by groups of physicians; psychiatrists and psychoanalysts; and surgeons;
2. Services of licensed dentists, including orthodontists and dental surgeons;
3. Services of licensed osteopathic physicians;
4. Services of licensed chiropractors;
5. Services of other licensed practitioners engaged in practice in health fields, such as optometrists, chiropodists, Christian Science practitioners, dieticians, midwives, naturopaths, nurses (both registered and practical), nutritionists, occupational therapists, podiatrists, physiotherapists, psychologists (clinical), psychotherapists (not M.D.'s);
6. Services of nursing and health related personal care facilities, including extended care facilities, skilled nursing homes, convalescent homes with health care, domiciliary care with health care, homes for retarded with health care, personal care facilities with health care, and rest homes with health care;
7. Hospital services, including general medical and surgical hospital services, mental hospital services, psychiatric hospital services, and specialty hospital

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services;

8. Medical and dental laboratory services.

9. Medical services provided through outpatient care facilities, including clinics not operated by groups of licensed practitioners, clinics for family planning, dental insurance (providing services through own facilities), dispensaries not operated by groups of licensed health practitioners, group health associations providing medical services, health maintenance organizations, medical insurance (providing services through own facilities), outpatient treatment clinics for alcoholism or drugs, rehabilitation centers, outpatient (medical treatment), and speech defect clinics; and

10. Other health and allied services, including blood banks, blood donor stations, medical photography and art, oxygen tent service, and visiting nurse associations.

1 (11) Insurance Services. -

2 (a) Exempt from the tax on the sale or use of services
3 are insurance services of agents and brokers, as enumerated
4 in SIC Major Group 64, insurance service companies, and
5 (with the exception discussed in paragraph(d)) consideration
6 paid for insurance, including annuities, as defined under
7 the Florida Insurance Code and Chapter 440, Florida
8 Statutes.

9 (b) SIC Major Group 64, concerning insurance agents and
10 brokers whose services are exempt, is on page 288 of the
11 Standard Industrial Classification Manual. It describes
12 agents primarily acting as independent contractors in the
13 sale or placement of insurance contracts with one carrier,
14 more than one carrier, or those who do not represent any
15 particular carrier. Agents or brokers who are employees of
16 the insurance carriers they represent are not exempt under
17 this exemption, but are exempt as employees (see subsection
18 (2)).

19 (c) Services of insurance service companies that are
20 exempt include fire loss appraisal, insurance adjustment,
21 advisory, educational, information, inspection and
22 investigation, loss prevention, patrol, processing of
23 claims, professional standards, reporting, research, pension
24 and retirement plan consulting, policyholders' consulting,
25 and ratemaking services.

26 (d) Consideration paid for insurance is exempt. Title
27 V of Chapter 624, Florida Statutes, defines and enumerates
28 various types of insurance, as follows: life insurance,
29 health insurance, casualty insurance (including vehicle
30 insurance, liability insurance, workers' compensation
31 insurance, burglary and theft insurance, personal property
32 floater, glass insurance, boiler and machinery insurance,
33 leakage and fire extinguishing equipment insurance, credit
34 insurance, malpractice insurance, animal insurance, elevator
35 insurance, entertainment insurance, insurance against

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1 failure of certain institutions to record documents or
2 failure to file certain personal property instruments, and
3 miscellaneous casualty insurance recognized and regulated by
4 the Florida Department of Insurance); surety insurance
5 (including insurance guaranteeing the fidelity of persons
6 holding positions of public and private trust, guaranteeing
7 the performance of certain contracts, indemnifying financial
8 institutions against check alteration or forgery and against
9 loss of valuable papers or property); marine insurance;
10 title insurance (but see paragraph (g), below); and funeral
11 insurance.

12 (e) ~~Two~~ Other chapters of Florida Statutes recognize
13 the essential nature of other transactons as insurance, and
14 authorize the Florida Department of Insurance to exercise
15 jurisdiction over and to regulate them. These are:

- 16 1. Fraternal benefit Societies (Chapter 632);
- 17 2. Warranty Associations (Chapter 634);
- 18 3. Mortgage Guaranty Insurance (Chapter 635);
- 19 4. Professional Service Plans (Chapter 637);
- 20 5. Ambulance Service Contracts (Chapter 638);
- 21 6. Preneed Funeral Contracts (Chapter 639);
- 22 7. Health Care Service programs (Chapter 641);
- 23 8. Legal Expense Insurance (Chapter 642); and
- 24 9. Bail Bondsmen (Chapter 648).

25 ~~fraternal benefit societies (Chapter 632) and bail bondsmen~~
26 ~~(Chapter 648).~~ Payments to them for assuming certain risks
27 are, therefore, exempt as insurance from this tax.

28 (f) Also exempt as insurance are "allied lines
29 insurers" that pay insurance premiums taxes and motor
30 vehicle service agreement companies that are expressly
31 exempt from sales tax pursuant to part I, Chapter 634, F.S.
32 Other organizations regulated by the Department of Insurance
33 are subject to sales tax because such companies neither pay
34 insurance premium taxes nor are they expressly exempt from
35 sales tax pursuant to Chapter 634, F.S. Instead of

1 providing benefits for the occurrence of theft, accident,
2 illness or death, non-exempt companies sell contracts for an
3 initial fee promising the performance of maintenance,
4 repair, or replacement services for the occurrence of normal
5 wear and tear of tangible personal property or real
6 property. Such organizations include home warranty
7 associations and service warranty associations defined in
8 Chapter 642, F.S. Similar organizations regulated by the
9 Department of Insurance are not exempt from sales or use
10 taxes pursuant to this paragraph but are exempt from such
11 taxes because they constitute services that are expressly
12 exempted by the provisions of Chapter 212, F.S. Such
13 similar organizations include optometric service plans (part
14 I of Chapter 637), pharmaceutical service plans (part II of
15 Chapter 637), and ambulance service associations (Chapter
16 638), but do not include legal expense corporations defined
17 in Chapter 642, F.S. Also exempt as insurance are "allied
18 lines insurers" regulated by the Department of Insurance,
19 which sell insurance-type contracts, including motor vehicle
20 service agreement companies (Part I of Chapter 634), home-
21 warranty associations (Part II of Chapter 634), service
22 warranty associations (Part III of Chapter 634), optometric
23 service plans (Part I of Chapter 637), pharmaceutical
24 services plans (Part II of Chapter 637), dental service plan
25 corporations (Part III of Chapter 637), ambulance service
26 associations (Chapter 638), legal expense corporations
27 (Chapter 642), and continuing care facilities (Chapter 651).
28 All of these organizations sell insurance-like contracts for
29 an initial fee or premium which promise the performance of
30 certain services or the provision of certain benefits in the
31 future upon determinable contingencies.

32 (g) Notwithstanding paragraph (d), above, consideration
33 paid for title insurance that is in excess of 110 percent of
34 the risk premium rate promulgated pursuant to s. 627.782, is
35 not exempt as consideration paid for insurance. Section
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1 627.782, F.S., gives the Florida Department of Insurance the
2 power and duty to promulgate the risk premium rates to be
3 charged in this state by insurers for the respective types
4 of title insurance contracts and services incident thereto,
5 and to promulgate rules on the applicability of such rates.
6 That Department's rules are in Chapter 4-21, Florida
7 Administrative Code. A property owner is more likely to be
8 required to pay more than 110 percent of the risk premium
9 rate if he or she purchases title insurance in a closing.
10 In this event, the excess over 110 percent of the risk
11 premium rate represents charges for such services provided
12 in addition to assumption of risk as title searches, title
13 examination, document preparation, recording,
14 recertification of an abstract, etc.

15 (h) Transactions that, though involving some assumption
16 or risk, are, considered as a whole, more in the nature of
17 sales of uses of services than insurance transactions are
18 not exempt as insurance. Recognition by the Florida
19 Department of Insurance of such a transaction as insurance
20 will be considered as evidence that it is more in the nature
21 of an insurance than a service transaction, but will not be
22 conclusive in this regard.

23 1. Example: Brown, an attorney, agrees to provide his
24 client, Green, all the legal services he needs for a year
25 for a \$5,000 retainer fee. The fee would be taxable when
26 the services are performed.

27 2. Example: Annoying Pest Control Co., for a charge of
28 \$200 eradicates termites in a building, and obligates
29 itself, in the event that any termites are found on the
30 premises within a year after its service, not only to return
31 and carry out eradication activities without further charge,
32 but also to repair at its expense any damage caused by
33 termites since its original service. The charge would be
34 fully taxable.

35 (i) Annuities - For purposes of the exemption of
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1 "annuities" from the tax on the sale or use of services, an
2 annuity is defined as a right to receive payments at regular
3 intervals during an individual's lifetime, or for a stated
4 number of years, or in perpetuity.

5 (j) The exemption of consideration paid for insurance
6 is only an exemption from the tax on the sale or use of
7 services, not from the tax on the sale or use of tangible
8 personal property. Therefore, when insurance is purchased
9 as part of the sale of tangible personal property, ~~the~~
10 ~~portion of the sale attributable to the insurance portion of~~
11 ~~the~~ entire transaction is subject to ~~the~~ tax as a ~~on the~~
12 sale of tangible ~~the~~ personal property.

13 Example: Blue purchases an automobile and receives with it
14 a guarantee of its tires for a period to two years, which
15 entitles him to have any tire replaced if it should become
16 unusable at anytime during that period, even if not due to a
17 defect in the tire. The total cost of the transaction is
18 taxable, without any reduction based on the value of the
19 insurance coverage.

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(12) Interest. -

(a) The tax on sale or use of services does not apply to interest, which is money paid for the use of money. A Federal court, in Rosen v. U. S., C.A.Pa., 288 F.2d 658, 660 defined interest as "the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money." Where a transaction involves compensation both for a service and for interest, the burden of proof is on the person claiming the interest exemption or exclusion to prove how much of the compensation is for interest and how much is for taxable service.

(b) "Points" that constitute prepayment of interest are exempt as interest from the tax on sale or use of services.

(c) Credit card interest is exempt.

(d) Discount charges for the purchase of accounts receivable are exempt.

1 (13) **Coin Operated Laundries.** - Exempt from the tax are
2 coin-operated laundries and coin-operated dry cleaning
3 establishments enumerated in SIC Industry Number 7215. As
4 described on page 298 of the Standard Industrial
5 Classification Manual, these are establishments primarily
6 engaged in the operation of coin-operated or similar
7 self-service laundry and dry cleaning equipment for use on
8 the premises, or in apartments, dormitories, and similar
9 locations; that is, coin-operated laundries, coin-operated
10 dry cleaning, launderettes, laundromats, coin-operated
11 laundry machine routes, and coin operated self-service
12 laundry and coin operated dry cleaning (see
13 12-ER-87-27.

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1 (14) ~~Maintenance Fees. Paid To Homeowners Association.~~ -

2 Maintenance assessments or fees paid by an association
3 member to a homeowners association, ~~residential~~ condominium
4 owners association, ~~residential~~ property owners association,
5 ~~residential~~ mobile homeowners association, or ~~residential~~
6 cooperative association are not subject to tax on the sale
7 or use of services. However any consideration paid to a
8 merchant's association by a lessee or licensee shall be
9 taxable if such payments are a part of the consideration for
10 the right to use or occupy the real property. If the
11 payments are not part of the consideration for the right to
12 use or occupy the real property such payments are not
13 taxable, see 12-ER-87-78.

1 (15) Membership Charges. - Dues or fees paid to maintain
2 membership in organizations described in paragraphs (a)
3 through (c) are exempt from tax on the sale or use of
4 services. However, in regard to those organizations
5 described in paragraphs (a) and (b), this exemption is only
6 applicable to dues and fees paid to those organizations
7 which are not for profit corporations under Chapter 617,
8 F.S., or a comparable law of another state or are exempt
9 organizations under the Internal Revenue Code.

10 (a) Membership organizations enumerated in SIC Major
11 Group 86, which, as described on pages 330 and 331 of the
12 Standard Industrial Classification Manual, are:

13 1. Business associations promoting business interests,
14 which includes better business bureaus; boards of trade,
15 other than security and commodity exchanges; business
16 associations, other than civic and social; Chambers of
17 Commerce; contractors' associations; growers' associations
18 that are not engaged in contract buying or selling; growers'
19 marketing advisory services; industrial standards
20 committees; Junior Chambers of Commerce; manufacturers'
21 institutes; merchants' associations, that are not engaged in
22 credit investigations; public utility associations; real
23 estate boards; shipping and steamship company associations;
24 and trade associations.

25 2. Professional membership organizations of
26 professional persons for the advancement of the interest of
27 their profession, which effectively includes bar
28 associations; dental associations; engineering associations;
29 medical associations; professional membership organizations;
30 and scientific membership associations.

31 3. Labor unions and similar labor organizations for the
32 improvement of wages and working conditions, which includes
33 labor organizations; labor unions; and local or national
34 trade unions.

35 4. Civic, social, and fraternal associations, which are
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1 limited to alumni associations and clubs; Boy Scout
2 organizations; businessmen's clubs, civic and social; bars
3 and restaurants owned and operated for members of
4 organizations only; citizens' unions; civic associations;
5 community membership clubs, other than amusement and
6 recreation clubs; fraternal associations, other than
7 insurance offices; fraternities and sororities, except
8 residential; Girl Scout organizations; taxpayers'
9 associations; university clubs; veterans' organizations;
10 parent-teacher associations; singing societies; social
11 clubs, membership; YMCA, YWCA, YMHA, YWHA youth
12 associations, except hotel units.

13 5. Political organizations established to promote the
14 interests of a national, State, or local political party or
15 candidate, including, but not limited to, Democratic clubs
16 and Republican clubs.

17 6. Religious organizations operated for worship or for
18 promotion of religious activities, including, but not
19 limited to, churches, convents, monasteries, and religion
20 schools operated by religious organizations.

21 7. Other membership organizations, limited to
22 automobile owners' associations and clubs; Christian Science
23 reading rooms; farm bureaus; farm granges; historical clubs,
24 other than professional; humane societies, animal, and
25 poetry associations.

26 8. This exemption does not include dues or fees paid
27 to business establishments operated by membership
28 organizations such as hospitals, hotels, credit unions,
29 concert or opera companies, golf and country clubs, and
30 fraternity and sorority houses.

31 (b) Membership dues and membership fees paid to arts,
32 historical, and science organizations that are
33 not-for-profit corporations under Chapter 617, F.S., or a
34 comparable law of another state or are exempt organizations
35 under the Internal Revenue Code are not subject to tax.

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(c) Membership dues or other fees paid to regulatory
athletic associations are not subject to tax.

1 (16) Motion Picture Qualified Production Services -

2 (a) Production activities or services performed
3 directly in connection with the production of qualified
4 motion pictures performed by any person for a person
5 principally engaged in the business of producing qualified
6 motion pictures or for a person who owns or leases property
7 used primarily for the production of qualified motion
8 pictures are not subject to tax. As used in this
9 subsection, the term "production" means that phase of the
10 process by which qualified motion pictures are made or
11 fashioned, from (concept) script to finished product.

12 (b) Production activities or services performed directly
13 pictures includes and are limited to;

14 1. Photography, sound and recording, casting, location
15 managing and scouting, shooting, creation of special and
16 optical effects, animation, adaptation (language , media,
17 electronic or otherwise), technological modifications,
18 computer graphics, set and stage support (such as
19 electricians, lighting designers and operators, greensmen,
20 prop managers and assistants, and grips), wardrobe (design,
21 preparation and management), hair and make-up (design,
22 production, and application), acting performing (such as
23 acting, dancing and playing), designing and executing
24 stunts, coaching, consulting, writing, scoring, and
25 composing, choreographing, script supervising, directing,
26 producing, transmitting dailies, dubbing, mixing, editing,
27 cutting, looping, printing, processing, duplicating,
28 storing, and distributing;

29 2. The design, planning, engineering, construction,
30 alteration, repair and maintenance of real or personal
31 property including stages, sets, props, models, paintings,
32 and facilities principally required for the performance of
33 those limited services listed in subparagraph 1., above;
34 and

35 3. Property management services directly related to
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property used in connection with the limited services described in subparagraphs 1. and 2.

(c)1. "Qualified motion picture" for purposes of this subsection means all or any part of a series of related images, either on film, tape or other embodiment, including, but not limited to, all items comprising part of the original work and film-related products derived therefrom as well as duplicates and prints thereof and all sound recordings created to accompany a motion picture, which is produced, adapted or altered for exploitation in, on or through any medium or device and at any location, primarily for entertainment, industrial, or educational purposes.

2. The term "qualified motion picture" for purposes of this subsection does not mean all or any part of a series of related images, either on film, tape or other embodiment, including, but not limited to, all items comprising part of the original work and film-related products derived therefrom as well as duplicates and prints thereof and all sound recordings created to accompany a motion picture, which is produced, adapted or altered for exploitation in, on or through any medium or device and at any location, for advertising purposes or commercially produced for private use.

(d) The exemption for qualified production services, shall not be construed to exempt the sale, use, storage, use, or other consumption in this state of tangible personal property used or consumed in the production of motion pictures.

1 (17) **Trucking And Warehousing Services.** - Trucking and
2 warehousing services, except for the services described in
3 paragraphs (b) and (c), are not subject to sales and use tax
4 on services.

5 (a) Local and long distance trucking and warehousing
6 services enumerated in SIC Major Group 42, including only:

7 1. Local trucking without storage in a single
8 municipality, contiguous municipalities, or a municipality
9 and its suburban areas, providing one or more of the
10 following services: baggage transfer; carting, by truck or
11 horse drawn wagon; collecting and transporting refuse,
12 without disposal; debris removal, carting only; delivery
13 service, vehicular; draying, local: without storage; farm to
14 market hauling; furniture moving, local: without storage;
15 garbage and refuse, collecting and transporting: without
16 disposal; hauling, by dump truck; hauling live poultry: on a
17 contract or fee basis; log trucking; mail carriers,
18 contract; motorcycle delivery service; package delivery by
19 truck; parcel delivery by truck; safe moving; star routes,
20 truck rental, with drivers; trucking timber.

21 2. Trucking, except local, by furnishing "over the
22 road" trucking service either as common carriers or under
23 special and individual contracts or agreements for
24 long-distance trucking, "over the road" trucking, and other
25 types of trucking that is not local.

26 3. Local trucking, with storage, furnishing trucking
27 and storage services, including household goods, in a single
28 municipality, contiguous municipalities, or a municipality
29 and its suburban areas, including only furniture moving,
30 local: combined with storage; household goods moving: local,
31 combined with storage.

32 4. Farm product warehousing and storage other than cold
33 storage, including only bean cleaning and warehousing; bean
34 elevators, except sales; cotton compresses and warehouses;
35 grain elevators, storage only; potato cellars; tobacco

1 warehousing and storage; and wool and mohair warehousing.
2 (See also subsection (4).)

3 5. Refrigerated warehousing in the storage of
4 perishable goods, including only cheese warehouses; cold
5 storage locker or food locker rental; frozen food locker
6 rental; other cold storage or refrigerated warehousing;
7 rental of locker space for the storage of food products for
8 individual households; and provision of incidental services
9 for processing, preparing, or packaging food for storage.
10 (But see paragraph (d).) and see also subsection (7).)

11 6. Household good warehousing and storage, without
12 local trucking, including furniture storage and household
13 goods warehousing and storage.

14 7. Warehousing and storage of a general line of goods.

15 8. Warehousing and storage of special products,
16 including only automobile dead storage; fur storage, for the
17 trade; lumber terminals (storage for hire); oil and
18 gasoline storage caverns (for hire); petroleum and chemical
19 bulk stations and terminals for hire; storage of goods at
20 foreign trade zones; special storage, except farm product,
21 cold storage, and household goods; textile warehousing;
22 special warehousing, except cold storage, farm, and
23 household goods; whiskey warehousing.

24 9. Freight trucking terminals, with or without
25 maintenance facilities.

26 (b) Not included in Major Group 42, and, therefore, not
27 exempt as motor freight transportation and warehousing (but,
28 possibly, exempt on some other basis) are natural gas
29 storage; field warehousing; collecting and disposing of
30 refuse by processing or destruction of materials; removal of
31 overburden from mines or quarries; contractors hauling dirt,
32 rock, etc.; selling frozen food for home freezers;
33 warehousing primarily engaged in the blending of wines; and
34 repair of trucks.

35 (c) Trucking services related to sanitary services are
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not exempt as motor freight transportation under this subsection, but some such services are exempt as sanitary services under subsection (20).

(d) Warehousing that was taxable before July 1, 1987 as leases, rentals, or licenses of real property or as storage of tangible personal property remains taxable and is not exempt as a service under this subsection.

1 **(18) Passenger Transportation Services.** - Passenger
2 transportation services enumerated in paragraphs (a), (b),
3 (c), and (d) are exempt.

4 (a) Local and suburban mass passenger transportation
5 over regular routes and on regular schedules, which may
6 involve use of one or more modes of transportation,
7 including only airport transportation service, local; bus
8 line operation, local; city and suburban bus line operation;
9 elevated railway operation; local railway operation;
10 passenger transportation, regular route between airports and
11 terminals; street railway operation; suburban and urban
12 railway operation; subway operation; and trolley coach
13 operation.

14 (b) Ambulance service.

15 (c) Hearse and limousine rental, with drivers.

16 (d) Intercity and rural highway passenger
17 transportation by motor vehicles, the operations of which
18 are principally outside a single municipality, outside one
19 group of contiguous municipalities, and outside a single
20 municipality and its suburban areas, including only intercity
21 bus lines; intercity motor vehicle highway passenger
22 transportation, special services; interstate bus lines; and
23 interurban bus lines.

24 (e) Not exempt as passenger transportation under this
25 subsection are services rendered by: aerial tramways;
26 automobile rental; cog railways; sightseeing buses;
27 passenger transportation charter services; school buses; and
28 terminal and service facilities for motor vehicle passenger
29 transportation.

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1 (19) Water, Air and Other Transportation Services.

2 (a) Water transportation services enumerated in
3 subparagraphs 1. (a) through 13. (g) are exempt.

4 1. (a) Deep sea foreign transportation services of
5 freight or passengers between the United States and foreign
6 ports and to noncontiguous territories, enumerated in SIC
7 Industry Number 4411.

8 2. (b) Deep sea domestic transportation services of
9 freight or passengers between the United States mainland and
10 Alaska, Hawaii, the Panama Canal Zone, Puerto Rico, island
11 possessions or protectorates, noncontiguous territories, and
12 between such places, enumerated in SIC Industry Number
13 4421.

14 3. (c) Coastwise transportation services of freight
15 or passengers on the deep seas between mainland United
16 States ports, between those located solely on the Atlantic
17 coast and Gulf coast, enumerated in SIC Industry Number
18 4422.

19 4. (d) Intercoastal transportation services of freight
20 or passengers on the deep seas between ports on the United
21 States Atlantic and Gulf coasts on the one hand, and the
22 United States Pacific coast ports on the other, via the
23 Panama Canal, enumerated in SIC Industry Number 4423.

24 5. (e) Towing and tugboat services in the performance
25 of auxiliary or terminal services in harbor areas by vessels
26 that do not carry cargo or passengers, including docking of
27 ocean vessels; marine towing; shifting of floating equipment
28 within harbors; and undocking of ocean vessels, enumerated
29 in SIC Industry Number 4454.

30 6. Lighterage services involved with operating
31 lighters and other harbor vessels for transferring goods and
32 passengers between ship and shore or from one ship to
33 another, as described in SIC Industry Number 4453.

34 7. (f) Marine cargo handling services enumerated in
35 SIC Industry Number 4463 from the time cargo, for or from a
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1 vessel, arrives at shipside, dock, pier, terminal, staging
2 area, or intransit area until cargo loading or unloading
3 operations are completed, including operation and
4 maintenance of piers, docks, and associated including
5 buildings and facilities; loading vessels; ship hold
6 cleaning; stevedoring; terminal operation, waterfront;
7 unloading vessels; waterfront terminal operations; and cargo
8 handling operations carried on by transportation companies
9 and separately reported.

10 ~~8.(g)~~ Piloting services.

11 ~~9.(h)~~ Ship cleaning.

12 ~~10.(i)~~ Steamship leasing.

13 ~~11.(j)~~ Marine surveying.

14 ~~12.(k)~~ Ship repair and maintenance services for
15 vessels used in interstate or international commerce.

16 ~~13.(l)~~ Storage of cargo at port facilities.

17 (b) Also exempt are freight forwarding and arrangement
18 of transportation of freight and cargo, enumerated in SIC
19 Industry Numbers 4712 and 4723, regardless of the mode of
20 transportation employed, as follows:

21 ~~1.(m)~~ Freight forwarding services, undertaking the
22 transportation of goods from shippers to receivers for a
23 charge covering the entire transportation, and in turn
24 making use of the services of other transportation
25 establishments as instrumentalities in effecting delivery.
26 A forwarding establishment pays transportation charges to
27 other establishments as part of its costs of doing business
28 and assumes responsibility for delivery of the goods. There
29 are no direct relations between shippers and the
30 transportation establishments performing the movement.
31 Freight forwarding services that are exempt include customs
32 clearance of freight, domestic forwarding, foreign
33 forwarding, freight consolidation, and preparation of
34 shipping documents, ~~as enumerated in SIC Industry Number~~
35 ~~4712.~~

1 2.(n) Arrangement ~~services~~ of transportation of freight
2 and cargo by furnishing shipping information and acting as
3 agents in arranging transportation for freight and cargo,
4 when separate reports are not available for marine cargo
5 handling operations performed by transportation arranging
6 establishments, including only shipping agents or brokers;
7 transportation brokers; customhouse brokers; railroad
8 freight agencies that are not operated by railroad
9 companies; freight rate information service; transport
10 clearinghouse; transportation rate services; and truck
11 transportation brokers, ~~as enumerated in SIC Industry
12 Number 4723.~~

13 ~~(o) Lighterage services involved with operating
14 lighters and other harbor vessels for transferring goods and
15 passengers between ship and shore or from one ship to
16 another, as described in SIC Industry Number 4453.~~

17 (c)(p) Also exempt are ~~s~~Services related to processing
18 and accessorizing of motor vehicles as defined in s. 320.01,
19 F.S. automobiles that are imported through Florida ports by
20 water transportation or by international air transportation
21 services described in SIC Major Group Number 45.

22 1. For purpose of this paragraph s. 320.01, F.S.,
23 defines "motor vehicle" as:

24 "An automobile, motorcycle, truck, trailer,
25 semi-trailer, truck tractor and semitrailer combination, or
26 any other vehicle operated on the roads of this state, used
27 to transport persons or property, and propelled by power
28 other than muscular power, but the term does not include
29 traction engines, road rollers, such vehicles as run only
30 upon a track, bicycles, or mopeds as defined in s.
31 316.003(2)."

32 As indicated in this definition, it does not include the
33 following vehicles defined in subsection (2) of s. 316.003,
34 F.S.:

35 "Every vehicle propelled solely by human power, or
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1 any moped propelled by a pedal-activated helper motor with a
2 manufacturer's certified maximum rating of 1½ brake
3 horsepower, upon which any person may ride, having two
4 tandem wheels, and including any device generally recognized
5 as a bicycle though equipped with two front or two rear
6 wheels. The term does not include such a vehicle with a
7 seat height of no more than 25 inches from the ground when
8 the seat is adjusted to its highest position or a scooter or
9 similar device."

10 2. For purposes of this paragraph, the air
11 transportation services described in SIC Major Group 45 are
12 certificated air transportation carriers (Group Number 451),
13 noncertificated air transportation carriers (Group Number
14 452), airports and flying fields (Industry Number 4582), and
15 airport terminal services (Industry Number 4583).

16 (d)(4) Also exempt are sservices provided in connection
17 with cargo in international trade by any licensed
18 customhouse broker; any customs bonded warehouse, container
19 freight and examination station, or cartman; or freight
20 consolidator or deconsolidator.

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1 (20) Sanitary and Water Supply Services. -

2 (a) ~~1.~~ Exempt from the tax on the sale or use of
3 services are ssanitary services enumerated in SIC Group
4 Number 495, garbage transportation services, refuse
5 transportation services, and debris transportation services,
6 when such services are sold to residential households or
7 owners of residential models , ~~are exempt from tax.~~

8 Sanitary services thus exempt includes: sewerage systems,
9 including hook-ups and such treatment processes as may be
10 provided; the collection and disposal of refuse by
11 processing or destruction, including acid waste collection
12 and disposal; ashes collection and disposal; dead animal
13 disposal; dump operation; garbage collecting , ~~destroying,~~
14 and processing; incinerator operation; radioactive waste
15 material disposal; refuse and rubbish collection and
16 disposal; street refuse system services; waste materials
17 disposal at sea; malaria control and mosquito eradication;
18 sweeping services; and vacuuming of airport runways.

19 (b) ~~2.~~ Also exempt are ggarbage, refuse and debris
20 transportation services enumerated in SIC Industry Number
21 4212, when such services are sold to residential households
22 or owners of residential models, including include:
23 collecting and transporting refuse, without disposal; debris
24 removal, carting only; garbage and refuse, collecting and
25 transporting without disposal.

26 (c) ~~b.~~ Also exempt are sseptic tank cleaning services,
27 as enumerated in SIC Industry Number 7699 when such services
28 are sold to residential households or owners of residential
29 models , ~~are exempt from tax.~~

30 (d) Not exempt are:

31 1. The services described in paragraphs (a) through
32 (c) when sold to others than to owners of residential
33 households or owners of residential models; and

34 2. Tipping fees and other charges for the right to
35 dispose of garbage, refuse and debris, whether related to

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residential households or residential models.

(e) Also exempt are services of water supply systems in distributing water for sale for domestic, commercial, and industrial use (described in SIC Industry Number 4941) and irrigation systems services (described in SIC Industry Number 4971), including irrigation impounding reservoirs, irrigation system operation, and water distribution or supply systems for irrigation. Services in this paragraph are exempt whether related to residential households or residential models.

(f) For purposes of this subsection, residential households or residential models include apartments, condominiums, and similar multi-family dwellings that are not transient.

1 (21) Security and Commodity Brokerage Services. - Exempt
2 ~~are~~ Security and commodity brokerage services that are
3 described in paragraph (a) are exempt involving the transfer of
4 ~~securities or commodities.~~

5 (a) Services enumerated in SIC Major Group 62,
6 including:

7 1. Services provided by security brokers, dealers, and
8 flotation companies, which involve the purchase, sale and
9 brokerage of securities, and investment bankers services,
10 which involve the originating, underwriting, and
11 distributing issues of securities, including only bond
12 dealers and brokers, security distributors; security floor
13 traders, sale of investment certificates; general brokerage
14 investment firms; mutual fund selling by independent
15 salesmen; note brokers; oil and gas lease brokers; dealers
16 in oil royalties; sales of partnership shares in real estate
17 syndicates; security traders; security underwriters; tax
18 certificate dealers.

19 2. Services provided by commodity contracts brokers and
20 dealers, which involve buying and selling commodity
21 contracts on either a spot or future basis for their own
22 account or for the account of others, who are members or
23 associated with members, of recognized commodity exchanges,
24 including only commodity contracts; futures commodity
25 brokers and dealers; and commodity contract traders.

26 (b) For purposes of this exemption, the term, "broker"
27 is as defined in subsection (7) of s. 517.021, F.S., and
28 "securities" is as defined in subsection (19) of services.
29 517.021, F.S.

30 (c) Taxable security and commodity brokerage services
31 include, but are not limited to, the following:

32 1. Security and commodity brokerage services that do
33 not involve the transfer of securities or commodities, such
34 as providing investment advice, managing investments, ~~or~~
35 services as a trustee, or advisory services regarding
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investments when provided by an investment advisor as
defined in s. 517.021(12)(a), F.S. or any other investment
service;

2. Financial services taxable under subsection (9) of
this section; and

3. Accounting services or other investment services.

1 (22) **Social Services.** - Exempt are social services
2 described in paragraph (a).

3 (a) Social services enumerated in SIC Major Group 83,
4 includes;

5 1. Individual and family social services, including
6 counseling, welfare, or referral services; refugee,
7 disaster, and temporary relief services; adoption services
8 (excluding legal services provided for a fee, as to which
9 see subsection (25)(b)3.); adult day care services; aid to
10 families with dependent children; senior centers; child
11 guidance; community centers services; counseling center
12 services; family services, including family location and
13 marriage counseling, Big Brother and Big Sister services;
14 homemaker services; old age assistance, public welfare
15 center service; referral services for personal and social
16 problems; service leagues; settlement houses, Salvation
17 Army, etc. social service centers, Traveler's Aid Centers,
18 and youth centers.

19 2. Job training and vocational rehabilitation services,
20 including only job counseling, job or manpower training, or
21 vocational rehabilitation and habilitation services for the
22 unemployed, the underemployed, the handicapped, and to
23 persons who have a job market disadvantage because of lack
24 of education, Job skill or experience, skill obsolescences,
25 or personal characteristics or problems; sheltered
26 workshops, skill training; and such work experience centers
27 as OIC, Good Will, Job Corps, Lighthouse for the Blind,
28 etc.

29 3. Child day care services, engaged in the care of
30 infants or children, or in providing prekindergarten
31 education where medical care or delinquency correction is
32 not a major element. Substantial educational services may
33 or may not be provided. These services are usually designed
34 for prekindergarten or preschool children, but may be
35 provided for older children when they are not in school.

1 This type of social service is provided exclusively by child
2 care centers; day care centers; group day care centers; Head
3 Start centers; except in conjunction with schools; nursery
4 schools; and preschool centers.

5 4. Residential care, the provision of residential
6 social and personal care for children, the aged, and special
7 categories of persons with some limits on ability for
8 self-care, but where medical care is not a major element.

9 This type of social service is provided exclusively by
10 establishments providing 24-hour, year round, care for
11 children; Boys' town; children's boarding homes; children's
12 home; children's villages; group foster homes; halfway group
13 homes for persons with social or personal problems; halfway
14 homes for delinquents and offenders; homes for destitute men
15 and women; homes for children, with health care incidental;
16 homes for retarded, with health care incidental; homes for
17 the aged, with health care incidental; homes for the deaf or
18 blind, with health care incidental; homes for the
19 emotionally disturbed, with health care incidental; homes
20 for the physically handicapped, with health care incidental;
21 juvenile correctional homes; old soldiers' homes;
22 orphanages; rehabilitation (residential) centers, with
23 health care incidental; rest homes, with health care
24 incidental; self-help group homes for persons with social or
25 personal problems; and training schools for delinquents.

26 5. Other social services, including social services of
27 establishments primarily engaged in community improvement,
28 social change, and neighborhood development; organizations
29 primarily engaged in soliciting contributions on their own
30 account, and administering appropriations and allocating
31 funds among other agencies engaged in social welfare
32 services; services involving the prevention of criminal or
33 anti-social behavior, or rehabilitation services for
34 ex-prisoners; poverty boards; associations for retarded
35 children, the blind, the handicapped, etc.; community action
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1 agencies; community chests; community developments groups;
2 councils for social agencies, exceptional children, poverty,
3 etc.; fund raising organization not on a fee basis (united
4 funds, etc.); health and welfare councils; neighborhood
5 development groups; offender rehabilitation agencies;
6 offender self-help organizations; parole offices; probation
7 offices; self-help organizations: alcoholics and gamblers
8 anonymous; senior citizens associations; social change
9 associations: Urban Coalition, Urban League, etc.; social
10 service information exchanges: alcoholism, drug addiction,
11 etc.; United Fund councils; United Givers Funds; Youth
12 self-help agencies; Mobilization for Youth, HARYOU Act,
13 Pride, Inc.

14 (b) Any person engaged in the business of raising funds
15 on a contract basis such as telephone solicitation is
16 providing a taxable service.

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1 (23) **Compensation For Participation In Athletic Or**
2 **Sporting Events.** Forms of compensation described in paragraphs
3 (a), (b), (c), and (d) shall be exempt.

4 (a) Remuneration paid to athletes for services related
5 to their participation in athletic or sports events,
6 including but not limited to:

7 1. Prizes and awards;

8 2. Point fund and bonus monies;

9 3. Other fees paid based upon individual or team
10 performance including team sponsorship fees; and

11 4. Sponsorship or other monies paid to athletes or
12 event sponsors which underwrite items 1 through 3 above but
13 only when the funds are paid to the athlete and no part of
14 the fund more to the benefit of the sponsor.

15 a. For purposes of this exemption, an "event" is a
16 scheduled activity in which one or more athletes, as defined
17 in subparagraph 3., is to engage in athletics or sports, as
18 defined in subparagraph 2. at which spectators, either live
19 or by broadcast media, are anticipated.

20 b. For purposes of this exemption, an "athletic or
21 sports event" is an event engaged in by one or more
22 athletics, as defined in subparagraph 3., that involves some
23 movement of the human body; gives enjoyment or recreation;
24 and requires physical strength, skill, speed, dexterity, or
25 training in its performances, including, but not limited to:
26 badminton, baseball, basketball, bowling, boxing, fencing,
27 football, bowling, boxing, fencing, football, golf,
28 gymnastics, hockey, jai ali, racing, soccer, swimming, table
29 tennis, tennis, track, volley ball, and wrestling. The
30 following are not athletics or sports events for purposes of
31 determining whether their participants are athletes: chess
32 exhibitions, games, or tournaments; circuses; and racing
33 that does not involve humans as active participants as
34 drivers, riders, or runners. ~~athletes perform in public.~~

35 c. For purposes of this exemption, an "athlete" is a
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1 human who engages as an active participant in an athletic or
2 sporting event, including, but not limited to a player,
3 rider of racing animals or teams of racing vehicles. an
4 ~~individual who participates in an athletic or sports event~~
5 ~~requiring physical strength, skill, speed, or training in~~
6 ~~its performances, including, but not limited to badminton,~~
7 ~~baseball, basketball, bowling, boxing, fencing, football,~~
8 ~~golf, gymnastics, hockey, jai alai racing, soccer, swimming,~~
9 ~~table tennis, tennis, track, volley ball, and wrestling.~~

10 ~~The following are not athletes~~ For purposes of this
11 exemption ~~and the compensation~~ paid to the following persons
12 for their services in this state is taxable unless there
13 exists an employee/employer relationship: referees; umpires;
14 coaches; managers and seconds of professional athletes;
15 promoters; trainers; owners and operators of sport
16 facilities; owners, trainers, and handlers of racing animals
17 (but see paragraph (b)), ~~circus acrobats, and dancers and~~
18 ~~other stage performers (jugglers, magicians, etc.),~~

19 Example: A golf professional, for a fee, comes to
20 a golf club to instruct its members on the finer points of
21 the game. While undeniably a professional athlete, his
22 services would not be exempt as related to participation in
23 an athletic or sports event, but would be exempt as a
24 recreational service (See (41) of this rule).

25 Example: The same professional is engaged to play
26 an exhibition 18 holes. His services would then be exempt
27 as related to participation in an athletic or sports event.

28 Example: The same professional participates in a
29 golf tournament. Again, it would be related to
30 participation in an athletic or sports event.

31 Example: A famous professional athlete makes a
32 television commercial for compensation. The service would
33 not be exempt as related to participation in an athletic or
34 sports event.

35 (b) Remuneration paid to owners of greyhounds or

1 racehorses for participation in pari-mutuel events including
2 not limited to:

3 1. Prizes and awards; and

4 2. Point fund and bonus monies;

5 However, not exempt is any portion of such payments that may
6 relate to services performed in connection with such
7 participation.

8 (c) Consideration paid for the right to broadcast
9 athletic or sports events at which admission is charged.
10 However, this does not exempt charges for advertising by
11 those who acquire such rights.

12 (d) Prizes, awards, point fund and bonus monies awarded
13 to sports teams or individual members of teams by third
14 parties based on objective criteria.

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1 (24) Real Estate Commission. - Also exempt are real
2 estate commissions when the conditions specified by
3 paragraphs (a) through (b) are met.

4 (a) The commission is paid to a real estate broker
5 registered in compliance with Florida law.

6 (b) The property seller affirmatively demonstrates to
7 the realtor who would be responsible for collecting the tax
8 if the service were not exempt, that at the time of signing
9 the initial listing contract on the real estate offered for
10 sale the property was assessed as seller resided thereon
11 ~~and was entitled to the homestead property exemption.~~ These
12 facts can be demonstrated by an affidavit signed by the
13 seller. The following is a suggested affidavit to serve
14 this purpose:

15 AFFIDAVIT FOR EXEMPTION OF
16 REAL ESTATE COMMISSIONS

17 STATE OF FLORIDA)
18 COUNTY OF _____)

19 Before me, the undersigned Notary Public, personally
20 appeared _____ who, being duly sworn,
21 says that he/she:

22 1. On _____ signed a contract with _____
23 (date) (realtor)

24 listing for sale the following real estate:

25 _____:
26 (description)

27 2. On that date the property was assessed as homestead
28 property pursuant to section 196.031., Florida Statutes.

29 ~~he/she was residing on said real estate, and~~

30 ~~3. On that date he/she was entitled to the homestead~~
31 ~~exemption pursuant to section 196.031., Florida Statutes.~~

32 _____
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34 (signature of seller)

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Sworn to and subscribed before me this _____ day of _____, 19____.

(Notary Public)

(c) The registered real estate dealer shall retain a copy of this affidavit or other means of affirmative demonstration of the required facts to support each exemption.

(d) For application of the transition rules to real estate commissions see Rule 12-ER-87-8(1)(b).

1 (25) **Legal Services.** Exempt are legal services that meet
2 either of the requirements in paragraphs (a) and (b).

3 (a) Services rendered by an attorney to a client to the
4 extent that the right to counsel guaranteed pursuant to
5 either the Sixth Amendment to the United States Constitution
6 or Article I, Section 16 of the Florida Constitution is
7 applicable to such legal services.

8 1. These constitutional provisions guarantee this right
9 only with respect to criminal prosecutions. Therefore,
10 legal services having no relation to past, present, or
11 potential future criminal prosecutions are not exempt as
12 pertinent to these constitutional guarantees (although they
13 may be exempt on some other basis).

14 2. Exempt as pertinent to these constitutional
15 guarantees are:

16 a. services provided in criminal trials or appeals;
17 and

18 b. services to a person charged with a crime before
19 trial;

20 3. Not exempt are:

21 a. services to a person who has not been charged with
22 a crime to advise and assist him or her in avoiding being so
23 charged with reference to a past act or to prepare to defend
24 against any prosecution against him or her that may be
25 brought; and

26 b. services to advise or assist a person to avoid any
27 future action or activity that may be a crime or that may
28 lead to a criminal prosecution against such person.

29 4. Legal services pertinent to these constitutional
30 guarantees are exempt only if:

31 a. criminal charges brought in the case are dismissed;
32 or

33 b. the client is ultimately adjudicated not guilty by
34 a court of competent jurisdiction to the extent that any
35 further prosecution would violate the constitutional
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1 prohibition against double jeopardy. Example: Accused pays
2 an attorney a fee to represent him in a prosecution by the
3 state for drug dealing. After a trial, he is found not
4 guilty. A Federal prosecution is then brought against him
5 based on the the same act or acts, and he is found guilty.
6 Legal services in the state prosecution would be exempt;
7 those in the Federal prosecution would not.

8 5. Legal services pertinent to these constitutional
9 guarantees are not initially exempt; and the tax on them
10 must be collected and remitted. The exemption is only
11 granted pursuant to a refund of taxes previously paid on the
12 services, after application by the service provider
13 demonstrating the facts or events requisite for the
14 exemption.

15 6. Confidentiality of attorney-client relations will be
16 preserved to the extent provided in the Florida Evidence
17 Code, Chapter 90, F.S., in administering this exemption
18 see also (c) of this rule. , as stated in paragraph (c).

19 (b) Also exempt are legal services ~~up to \$500 per~~
20 ~~person per calendar year for a~~ natural person that relate to
21 child support, enforcement or civil rights, or bankruptcy.
22 ~~the types of matters outlined in subparagraphs 1. through~~
23 ~~10. of this paragraph.~~

24 1. Child support ~~includes, including~~ services to seek
25 favorable child support court orders, to enforce such
26 orders, and to collect child support due.

27 ~~2. Child custody, including services to obtain~~
28 ~~favorable child custody court orders, to amend such orders~~
29 ~~to enforce such orders, and to obtain and enforce visitation~~
30 ~~rights, including grandparent visitation rights.~~

31 ~~3. Adoption, including advice and assistance in finding~~
32 ~~a suitable child or children to adopt and in legal~~
33 ~~proceedings to make an adoption or adoptions official, but~~
34 ~~excluding fees in the nature of brokerage between those who~~
35 ~~wish to adopt and those who are willing to make children~~

1 ~~available for adoption for compensation.~~

2 ~~4. Divorce, including advice and assistance with~~
3 ~~divorce and separation, including drafting and negotiation~~
4 ~~of agreements; advice on tax consequences and implications~~
5 ~~of divorce, and other problems of terminating a marriage by~~
6 ~~divorce or separation.~~

7 ~~5. Guardianship, including both establishing and~~
8 ~~termination of guardianships.~~

9 ~~6. Juvenile cases, including representation of~~
10 ~~juveniles in protecting their rights or in defending against~~
11 ~~criminal prosecutions. Unlike the legal services exemption~~
12 ~~in paragraph (a), the exemption for legal services in~~
13 ~~juvenile cases is not dependent upon a favorable outcome.~~

14 ~~7. Landlord/tenant relations, including services for~~
15 ~~both landlords and tenants.~~

16 ~~8. Mobile home rentals, including services both for~~
17 ~~those who rent mobile home and those from who mobile homes~~
18 ~~are rented.~~

19 ~~29. Enforcement of civil rights includes, including,~~
20 ~~but is not limited to, services to redress or prevent actual~~
21 ~~or alleged discrimination prohibited by:~~

22 a. Any State law, including, but not limited to Article
23 I of the Constitution of Florida and Part IX of Chapter 23,
24 Florida Statutes; and

25 b. Any Federal law, including, but not limited to equal
26 protection and other guarantees of the United States
27 Constitution and Federal statutes, including, but not
28 limited to those that prohibit discrimination in elections,
29 employment, housing, credit, and service by public programs;
30 but excluding rights of persons accused of crimes, to which
31 the exemption in paragraph (a) applies.

32 ~~10. Recovery of past or future medical expenses,~~
33 ~~limited to actual medical expenses paid or incurred in the~~
34 ~~past and actual medical expenses reasonably anticipated in~~
35 ~~the future, and excluding damages for pain and suffering,~~
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1 ~~loss of future earnings, punitive or exemplary damages, and~~
2 ~~property damages. If the recovery represents more than one~~
3 ~~form of damages, including medical expenses, the burden~~
4 ~~shall be the responsibility of the attorney to establish a~~
5 ~~reasonable basis for the apportionment of his services that~~
6 ~~represents the exempt and nonexempt services.~~

7 ~~11. When an attorney provides services of the type~~
8 ~~described in subparagraph 1. through 10. during a year for a~~
9 ~~natural person, the total compensation for which exceeds~~
10 ~~\$500, the services performed earliest for which fees~~
11 ~~totaling \$500 were charged shall be deemed those that are~~
12 ~~exempt. When more than one attorney provided such services~~
13 ~~for a natural person, those performed earliest for which~~
14 ~~fees totaling \$500 were charged, regardless of which~~
15 ~~attorney or attorneys provided those services, shall be~~
16 ~~deemed those that are exempt. No more than \$500 of legal~~
17 ~~services for one person per calendar year shall be exempt,~~
18 ~~even where a person is provided services of more than one of~~
19 ~~the types described in subparagraph 1. through 10. by more~~
20 ~~than one attorney.~~

21 3. For bankruptcy see (42) of this rule.

22 (c) ~~No attorney shall be required to reveal the~~
23 ~~identity of a client to claim an exemption under this~~
24 ~~subsection, to file a claim for refund based upon such an~~
25 ~~exemption, or to receive a refund. However, Where the~~
26 ~~identity of the client in relation to the service for which~~
27 ~~exemption is claimed is a matter of public record, the~~
28 ~~attorney will not be deemed to have revealed the client's~~
29 ~~identity or to have violated confidentiality of~~
30 ~~attorney-client relations when complying with any request by~~
31 ~~the department for information of record or that may easily~~
32 ~~be deduced from public records, where such information is~~
33 ~~reasonably needed by the department to audit the transaction~~
34 ~~or to act intelligently in approving or disapproving an~~
35 ~~exemption or a claim for refund.~~

1 (d) To receive a refund the purchaser of the legal
2 service for which a refund is sought must file an
3 application for refund from the State of Florida (DR-26)
4 pursuant to s. 215.26, F.S. Applications for Refund from
5 the State of Florida (DR-26) are available, without cost,
6 upon written request directed to the Department of Revenue,
7 Supply Section, Tallahassee, Florida 32399-0100.

8 ~~2. Attach a copy of the sales invoice, executed by the~~
9 ~~seller of the service, to the application for refund, which~~
10 ~~invoice shall contain the following information:~~

11 ~~a. the name and address of the purchaser;~~

12 ~~b. the description of the service rendered;~~

13 ~~c. the date on which the purchase of the service was~~
14 ~~made;~~

15 ~~d. the price and amount of Florida sales tax paid for~~
16 ~~said service, and~~

17 ~~e. the name and place of business of the provider of~~
18 ~~the service.~~

19 (ef) Where both exempt services and those that are not
20 exempt are provided a client, the burden of proof shall be
21 on the attorney to prove a reasonable apportionment between
22 exempt and non-exempt services as the basis for not
23 collecting the tax from the client.

24 (fg) The measure of the taxability of a legal service is
25 the total charge to the client for providing it, without any
26 deduction for overhead or other expenses of providing it.

27 Example: A Florida attorney who is on a calendar year basis
28 for Federal income tax purposes spends an entire calendar
29 year on a case, for which he receives a fee of \$100,000. On
30 his Federal income tax return, he reports \$100,000 of gross
31 income from his practice for the year, and deducts \$30,000
32 for overhead (rent, employees, stationery and office
33 supplies, etc.) and \$10,000 for expenses unrelated to
34 functioning of his office (travel, witness fees, printing,
35 etc.). He contends that these deductions from his total
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1 \$100,000 fee should also be allowed for purposes of the
2 Florida tax on the sale or use of services. He would be
3 unsuccessful in this contention, and the 5% tax on the legal
4 service he provided would be based on (measured) by the
5 total \$100,000 fee. It would be so measured whether such
6 expenses were separately stated and charged to the client
7 and reimbursed to the attorney.

8 (gr) If an attorney collects a fee on a contingency fee
9 basis in which a portion of his services were provided prior
10 to July 1, 1987, and the attorney has made the election to
11 remit the tax upon receipt of payment as described in
12 12-ER-87-7(b), the portion of the fee that represents
13 services provided after July 1, 1987 shall be determined by
14 multiplying the entire fee by the number of whole months
15 occurring after July 1, 1987 until collection, divided by
16 the number of whole months occurring from the initial
17 representation until collection.

18 Example: If an attorney agrees to represent a personal
19 injury claim on 1-1-87 and collects the fee of \$5,000 on
20 1-1-88, \$2,500 of the fee is taxable, i.e. $\$5,000 \times 6$
21 (months after 7-1-87 representation)/12 (months total
22 representation).

23 This apportionment equation shall be presumed to be
24 correct, and it shall be the attorney's responsibility to
25 demonstrate otherwise by appropriate documentation.

26 (hr) If an attorney collects a fee based on an hourly
27 fee basis and a portion of his services were provided prior
28 to July 1, 1987, and the attorney has made the election to
29 remit the tax upon receipt of payment as described in Rule
30 12-ER-87-7(b), the portion of the fee that represents
31 services provided after July 1, 1987 shall be determined by
32 multiplying the entire fee by the number of hours of
33 services provided after July 1, 1987, divided by the total
34 hours of services provided.

35 Example: If an attorney collects a fee of \$1,000 for twenty
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hours of services and fifteen hours occurred after July 1, 1987, \$750 of the fee is taxable, i.e. $\$1,000 \times 15$ (hours after 7-1-87)/20 (total hours).

This apportionment equation shall be presumed to be correct, and it shall be the attorney's responsibility to demonstrate otherwise by appropriate documentation.

1 (26) International Banking Transaction Organization

2 **Services.** - Exempt is a service described in paragraph (a)
3 by a banking organization defined in paragraph (b).

4 (a) International banking transaction that meets the
5 definition of that term in s. 199.023(11), Florida Statutes,
6 as follows:

7 "(11) 'International banking transaction' means:

8 "(a) The financing of the exportation from, or the
9 importation into, the United States or between jurisdictions
10 abroad of tangible personal property or services;

11 "(b) The financing of the production, preparation,
12 storage, or transportation of tangible personal property or
13 services which are identifiable as being directly and solely
14 for export from, or import into, the United States or
15 between jurisdictions abroad;

16 "(c) The financing of contracts, projects, or
17 activities to be performed substantially abroad, except
18 those transactions secured by a mortgage, deed of trust, or
19 other lien upon real property located in the state;

20 "(d) The receipt of deposits or borrowings or the
21 extensions of credit by an international banking facility,
22 except the loan or deposit of funds secured by mortgage,
23 deed of trust, or other lien upon real property located in
24 the state; or

25 "(e) Entering into foreign exchange trading or
26 hedging transactions in connection with the activities
27 described in paragraph (d).

28 "(12) "Abroad" means in one or more foreign
29 nations; in the colonies, dependencies, possessions, or
30 territories of a foreign nation or of the United States; or
31 in the Commonwealth of Puerto Rico."

32 (b) A "banking organization" is defined as follows by
33 s. 199.023(9), Florida Statutes:

34 "(9) "Banking organization" means:

35 "(a) A bank organized and existing under the laws
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of this state;

"(b) A national bank organized and existing pursuant to the provisions of the National Bank Act, 12 U.S.C. ss. 21 et seq., and maintaining its principal office in this state;

"(c) An Edge Act corporation organized pursuant to the provisions of s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq., and maintaining an office in this state;

"(d) An international bank agency licensed pursuant to the laws of this state;

"(e) A federal agency licensed pursuant to ss. 4 and 5 of the International Banking Act of 1978 to maintain an office in this state;

"(f) A savings association organized and existing under the laws of this state; or

"(g) A federal association organized and existing pursuant to the provisions of the Home Owners' Loan Act of 1933, 12 U.S.C. ss. 1461 et seq., and maintaining its principal office in this state."

1 (27) Travel Agents.

2 Exempt are services provided by travel agents related to
3 arrangement of transportation and accommodations. For
4 purposes of this exemption, a "travel agent" is a person ~~not~~
5 ~~operated or controlled by a transportation company~~ who is
6 primarily engaged in furnishing travel information, acting
7 as an agent in arranging tours and transportation for
8 passengers or acting as an independent ticket agency for
9 transportation establishments.

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1 (28) **Research and Development Services.** - Research and
2 development services described in s. 212.052(1)(a), Florida
3 Statutes, are exempt. That definition is as follows:

4 "(a) The term "research or development" means
5 research which has one of the following as its ultimate
6 goal:

7 "1. Basic research in a scientific field of
8 endeavor.

9 "2. Advancing knowledge or technology in a
10 scientific or technical field of endeavor.

11 "3. The development of a new product, whether or
12 not the new product is offered for sale.

13 "4. The improvement of an existing product,
14 whether or not the improved product is offered for sale.

15 "5. The development of new uses of an existing
16 product, whether or not a new use is offered as a rationale
17 to purchase the product.

18 "6. The design and development of prototypes,
19 whether or not a resulting product is offered for sale.

20 "The term 'research or development' does not include
21 ordinary testing or inspection of materials or products used
22 for quality control, market research, efficiency surveys,
23 consumer surveys, advertising and promotions, management
24 studies, or research in connection with literary,
25 historical, social science, psychological, or other similar
26 nontechnical activities."
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1 (29) **Religious Services.** - Exempt are religious
2 services provided by religious organizations, religious
3 institutions, or religious leaders. ~~However services that,~~
4 ~~though altruistic and meritorious, are not performed by~~
5 ~~religious organizations, institutions, or leaders are~~
6 ~~taxable unless exempt on some other basis.~~ Also exempt are
7 sales of services by any non-profit religious organization
8 described in SIC Industry Number 866 including churches,
9 convents, monasteries and religious schools operated by
10 religious organizations, when the sales are provided in
11 carrying out the organizations customary non profit
12 religious activity. However, services such as educational,
13 hospital, publishing or reading room services performed by
14 such religious organizations or leaders and services that,
15 though altruistic and meritorious, are not performed by such
16 religious organizations or leaders are taxable unless exempt
17 on some other basis.

1 (30) Interstate Telecommunication Services. - ~~Exempt is~~
2 Any service performed by or through interstate
3 telecommunications by a holder of a direct pay permit issued
4 pursuant to s. 212.05(1)(e), F.S. is exempt.

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1 (31) Taxicab Services. - Taxicab services described in
2 SIC Industry Number 4121 are exempt.

3 (a) ~~However, S~~services of taxicab associations and
4 similar organizations which do not operate taxicabs, but
5 supply maintenance and repair services to their members, are
6 taxable under SIC Industry Number 4172.

7 (b) Thus exempt in the furnishing of passenger
8 transportation by automobiles not operated on regular
9 schedules or between fixed terminals.

10 (c) Not exempt are taxicab services furnished by other
11 modes of transportation, such as water taxis and
12 helicopters.

1 (32) **Franchise Payments.** - Exempt from tax are payments
2 and contributions described in paragraphs (a) and (b).

3 (a) Payment by a franchisee, or receipt by a
4 franchisor, of royalties for use of intangible property,
5 including, but not limited to, use of a trade name or
6 trademark or franchise right to use or sale patented
7 products or copyrighted printed material.

8 (b) Contributions to a marketing fund or account
9 administered by the franchisor, made pursuant to a franchise
10 agreement, which contributions are used solely for the
11 purchase of advertising benefiting franchisees or for the
12 administration of such fund or account.

1 (33) Data Processing Services for Financial

2 Institutions. - ~~Exempt are~~ Data processing services are
3 exempt when, where the requirements of paragraphs (a)
4 through (d) are met, and they are performed for a financial
5 institution by a service corporation of a financial
6 institution. As used in this subsection, the term
7 "financial institution" means any savings and loan
8 association or savings bank organized under the Laws of
9 Florida, of the United States, or any of the other states,
10 ~~described in SIC Major Group 61 which includes~~
11 ~~establishments engaged in extending credit in the form of~~
12 ~~loans.~~

13 ~~(a) Credit agencies included in SIC Major Group 61~~
14 ~~are:~~

15 1. ~~Rediscount and financing institutions for credit~~
16 ~~agencies (other than banks) not primarily associated with~~
17 ~~agricultural credit, including Federal home loan banks,~~
18 ~~national mortgage associations, such as GNMA, FNMA, FHA, and~~
19 ~~rediscounting and financing for non-agricultural credit~~
20 ~~agencies, except banks.~~

21 2. ~~Rediscount and financing institutions for credit~~
22 ~~agencies (other than banks) primarily associated with~~
23 ~~agricultural credit, including Federal Farm Mortgage~~
24 ~~Corporation and Federal intermediate credit banks~~
25 ~~(agricultural credit).~~

26 3. ~~Savings and loan associations, including Federal~~
27 ~~Savings and Loan Associations, state annuity savings~~
28 ~~institutions and state savings and loan associations that~~
29 ~~are insured by the Federal Savings and Loan Insurance~~
30 ~~Corporation, state annuity savings institutions that are not~~
31 ~~insured but are members of the FHLB, state savings and loan~~
32 ~~associations that are not insured but are members of the~~
33 ~~FHLB, state annuity savings institutions that are neither~~
34 ~~insured nor members of the FHLB, and state savings and loan~~
35 ~~associations that are neither insured nor members of FHLB.~~

1 ~~4. Agricultural credit institutions, which are~~
2 ~~primarily engaged in extending agricultural credit,~~
3 ~~including agricultural loan companies, banks for~~
4 ~~agricultural cooperatives, Commodity Credit Corporation,~~
5 ~~agricultural credit institutions, farm mortgage companies,~~
6 ~~Farmers Home Administration, Federal land banks, livestock~~
7 ~~loan companies, and production credit associations~~
8 ~~(agricultural).~~

9 ~~5. Federally chartered and state chartered credit~~
10 ~~unions.~~

11 ~~6. Industrial loan companies not engaged in deposit~~
12 ~~banking, including industrial loan "banks", industrial loan~~
13 ~~companies, and Morris plan companies.~~

14 ~~7. Licensed small loan lenders, including licensed~~
15 ~~small loan lenders and licensed small loan personal finance~~
16 ~~companies.~~

17 ~~8. Installment sales finance companies, which are~~
18 ~~primarily engaged in financing retail sales made on the~~
19 ~~installment plan, but some of which are also engaged in~~
20 ~~financing wholesale sales on the installment plan, including~~
21 ~~acceptance corporations and dealers, automobile loans (may~~
22 ~~include automobile insurance), financing of automobiles,~~
23 ~~airplanes, furniture, appliances, etc, and installment sales~~
24 ~~finance, other than banks.~~

25 ~~9. Miscellaneous personal credit institutions,~~
26 ~~including Axias, remedial loan societies, and mutual benefit~~
27 ~~associations.~~

28 ~~10. Short term business credit institutions, which are~~
29 ~~establishments primarily engaged in advancing cash to~~
30 ~~business enterprises for relatively short periods, including~~
31 ~~business credit institutions, short term, credit card~~
32 ~~service, collection by central agency, direct working~~
33 ~~capital financing, factors of commercial paper, financing of~~
34 ~~dealers by motor vehicle manufacturers' organizations,~~
35 ~~buying of installment notes, installment paper dealer,~~
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1 ~~mercantile financing; purchasers of accounts receivable and~~
2 ~~commercial paper; purchase and sale of trust deeds, and~~
3 ~~working capital financing.~~

4 ~~11. Miscellaneous business credit institutions, which~~
5 ~~are primarily engaged in furnishing long-term general and~~
6 ~~industrial credit, including the finance leasing of~~
7 ~~automobiles, trucks, and machinery and equipment, including~~
8 ~~car or auto finance leasing; Export-Import Bank; general and~~
9 ~~industrial loan institutions; investment companies, small~~
10 ~~business; loan institutions; general and industrial;~~
11 ~~machinery and equipment finance leasing; pari-mutuel~~
12 ~~totalizator equipment finance leasing and maintenance, and~~
13 ~~truck finance leasing.~~

14 ~~12. Mortgage bankers and loan correspondents, which are~~
15 ~~establishments primarily engaged in originating mortgage~~
16 ~~loans; selling mortgage loans to permanent investors and~~
17 ~~servicing these loans and may also provide real estate~~
18 ~~construction loans, including bond and mortgage companies;~~
19 ~~loan correspondents; mortgage bankers; mortgage brokers;~~
20 ~~using own money and urban mortgage companies.~~

21 ~~13. Loan brokers, which are establishments primarily~~
22 ~~engaged in arranging loans for others, which operate mostly~~
23 ~~on a commission or fee basis and do not ordinarily have any~~
24 ~~continuing relationship with either borrower or lender,~~
25 ~~including farm or business loan agents; farm or business~~
26 ~~loan brokers; loan agents; loan brokers; and mortgage~~
27 ~~brokers; arranging for loans but using money of others.~~

28 (ab) The service corporation is organized pursuant to s.
29 545.74, Rules of the Federal Home Loan Bank Board.

30 (bc) All capital stock of the service corporation may be
31 purchased by only savings and loan associations and savings
32 banks having operations in this state.

33 (cd) No savings and loan association or savings bank
34 owns, or may own, more than 10 percent of the service
35 corporation's outstanding capital stock.

1 (~~d~~) Every eligible savings and loan association or
2 savings bank shall ~~may~~ own an equal amount of capital stock
3 or shall ~~may~~, on such uniform basis as the service
4 corporation may determine, own an amount of such stock equal
5 to a stated percentage of its assets or savings capital at
6 the time the stock is purchased, or an amount of such stock
7 equal to its pro-rata share of accounts serviced.

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1 (34) Personal Laundry Services Sold to Residents of
2 Nursing Homes.

3 (a) Personal laundry services sold to residents of
4 nursing home facilities, hospices and adult congregate
5 living facilities licensed under ~~Part I~~ of Chapter 400, F.S.
6 are exempt from tax, provided such resident furnishes the
7 service provider a statement declaring he is a resident of a
8 facility licensed under Chapter 400, F.S.

9 (b) A nursing home facility means any institution,
10 building, residence, private home, or other place, which
11 undertakes to provide for a period exceeding 24 hour nursing
12 care, personal care, or custodial care for 3 or more persons
13 not related to the owner, who by reason of illness, physical
14 infirmity, or advanced age require such service, but does
15 not include any place providing care and treatment primarily
16 for accutely ill. However, a facility offering services for
17 fewer than 3 persons is also required to be licensed if it
18 holds itself out to the public as an establishment which
19 regularly provides such services.

20 (c) A hospice means an autonomous, centrally
21 administered, nonprofit, as defined in Chapter 617,
22 medically directed, nurse-coordinated program providing a
23 continuum of home, outpatient, and homelike inpatient care
24 for the terminally ill patient and his family. It employs
25 an interdisciplinary team to assist in providing palliative
26 and supportive care to meet the special needs arising out of
27 the physical, emotional, spiritual, social, and economic
28 stresses which are experienced during the final stages of
29 illness and during dying and bereavement. This care is
30 available 24 hours a day, 7 days a week, and is provided on
31 the basis of need regardless of inability to pay.

32 (d) An adult congregate living facility hereinafter
33 referred to as "facility," means any building or buildings,
34 section of a building, or distinct part of a building,
35 residence, private home, boarding home, home for the aged,
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1 or other place, whether operated for profit or not, which
2 undertakes through its ownership or management to provide,
3 for a period exceeding 24 hours, housing, food service, and
4 one or more personal services for four or more adults, not
5 related to the owner or administrator by blood or marriage,
6 who require such services. A facility offering personal
7 services for fewer than four adults is within the meaning of
8 this definition if it formally or informally advertises to
9 or solicits the public for residents or referrals and holds
10 itself out to the public to be an establishment which
11 regularly provides such services.

1 (35) **Industrial Machinery and Equipment.** - Exempt are
2 services used directly and exclusively for maintenance,
3 retrofitting, repair, or replacement of industrial machinery
4 and equipment at fixed locations, which machinery and
5 equipment is used to manufacture, process, compound,
6 produce, fabricate, or prepare for shipment items of
7 tangible personal property for sale.

8 (a) For purposes of this exemption, "industrial
9 machinery and equipment" is as defined in s.

10 212.08(5)(b)6.a., Florida Statutes, as follows:

11 "Industrial machinery and equipment" means 'section 38
12 property' as defined in s. 48(a)(1)(A) and (B)(i) of the
13 Internal Revenue Code, provided 'industrial machinery and
14 equipment' shall be construed by regulations adopted by the
15 Department of Revenue to mean tangible property used as an
16 integral part of the manufacturing, processing, compounding,
17 or producing for sale of items of tangible personal
18 property. Such term includes parts and accessories only to
19 the extent that the exemption thereof is consistent with the
20 provisions of this paragraph."

21 (b) No additions to, amendments of, or repeal of the
22 cited provisions of the Internal Revenue Code enacted after
23 April 23, 1987, can be considered as affecting this
24 definition.

25 (c) This exemption only applies to the tax on such
26 services in excess of \$100,000 of tax during each calendar
27 year.

28 (d) This exemption does not apply to services relating
29 to machinery or equipment purchased or used by electric
30 utility companies, communications companies, phosphate or
31 other solid minerals severance, mining, or processing
32 operations, oil or gas exploration or production operations,
33 printing or publishing firms, any firm subject to regulation
34 by the Division of Hotels and Restaurants of the State
35 Department of Business Regulation, or any firm which does
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1 not manufacture, process, compound, or produce for sale
2 items of tangible personal property.

3 (e) This exemption does not apply to the purchase of
4 services related to industrial machinery and equipment when
5 such services are included as a part of the purchase of
6 tangible personal property or were subject to tax as part of
7 a sale prior to July 1, 1987; and this exemption does not
8 expand the exemptions provided in s. 212.08(5)(b)1. or 2.
9 (relating to sales of industrial machinery and equipment)
10 beyond their meaning prior to July 1, 1987.

1 (36) Oil and Gas Field Services. - Exempt are oil and
2 gas field services described in paragraph (a) and pipeline
3 transportation services described in paragraphs (b) and
4 (c).

5 (a) Oil and gas field services enumerated in SIC Group
6 Number 138. Included in such services are only:

7 1. Directional drilling of oil and gas wells on a
8 contract basis; re-drilling oil and gas wells on a contract
9 basis; reworking oil and gas wells on a contract basis;
10 "spudding in" oil and gas wells on a contract basis; and
11 well drilling - gas, oil, service and water intake on a
12 contract basis.

13 2. Oil and gas field exploration services, including
14 aerial geophysical exploration for oil and gas on a contract
15 basis; exploration for oil and gas fields on a contract
16 basis; geological exploration for oil and gas fields on a
17 contract basis; geophysical exploration for oil and gas
18 fields on a contract basis; and seismograph surveys on a
19 contract basis;

20 3. Other oil and gas field services, including
21 acidizing wells on a contract basis; bailing wells on a
22 contract basis; building oil and gas well foundations on
23 site on a contract basis; cementing oil and gas well casings
24 on a contract basis; chemically treating wells on a contract
25 basis; cleaning lease tanks, oil field, on a contract basis;
26 cleaning wells on a contract basis; derrick building,
27 repairing, and dismantling: oil and gas well--contract;
28 dismantling of oil well rigs (oil field service) on a
29 contract basis; erecting lease tanks, oil field, on a
30 contract basis; excavating slush pits and cellars on a
31 contract basis; "fishing" for tools, oil and gas fields, on
32 a contract basis; gas compressing (natural gas) at the
33 fields on a contract basis; gas well rig building,
34 repairing, and dismantling on a contract basis; grading oil
35 and gas well foundations on a contract basis; hydraulic

1 fracturing wells on a contract basis; impounding and storing
2 salt water in connection with petroleum production; lease
3 tanks, oil field, erecting, cleaning, and repairing on a
4 contract basis; logging wells on a contract basis; mud
5 service, oil field drilling on a contract basis; oil
6 sampling service for oil companies on a contract basis; oil
7 well logging on a contract basis; perforating well casings
8 on a contract basis; pipe testing--oil field service on a
9 contract basis; plugging and abandoning wells on a contract
10 basis; pumping of oil and gas wells on a contract basis;
11 removal of condensate gasoline from field (gathering) lines,
12 contract; running, cutting, and pulling casings, tubes and
13 rods, oil and gas wells; servicing oil and gas wells on a
14 contract basis; shooting wells on a contract basis;
15 shot-hole drilling service (oil field) on a contract basis;
16 surveying wells on a contract basis; and swabbing wells on a
17 contract basis.

18 (b) Pipe line services, enumerated in SIC Group Number
19 461, which are services related to the pipe line
20 transportation of petroleum and other commodities, except
21 natural gas (as to which, see paragraph (c)), including
22 crude petroleum pipe lines (excluding field gathering
23 lines); refined petroleum pipe lines; gasoline pipe line
24 common carriers; coal and slurry pipe line operations; and
25 pipe line operations other than petroleum and natural gas
26 pipe lines.

27 (c) Gas production and distribution services enumerated
28 in SIC Group Number 492.

1 (37) Rail Transportation. - Exempt are rail
2 transportation services enumerated in SIC Major Group 40,
3 including line-haul railroad, and switching and terminal
4 establishments, including only those described in paragraphs
5 (a) through (b).

6 (a) Line-haul operating railroads, including only
7 electric railroads, steam railroads, interurban railways,
8 and line-haul operating railroads.

9 (b) Switching and terminal establishments, which are
10 primarily engaged in the furnishing of terminal facilities
11 for rail passenger or freight traffic for line-haul service,
12 and in the movement of railroad cars between terminal yards,
13 industrial sidings, etc., and which do not necessarily
14 operate any vehicles themselves, but may operate the
15 stations and terminals, including only belt line railroads,
16 logging railroads, railroad terminals; and stations operated
17 by railway terminal companies.

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1 **(38) Beauty and Barber Shops Services.** - Exempt are
2 services described in paragraphs (a) and (b).

3 (a) Services of beauty shops, which are establishments
4 engaged in furnishing beauty services enumerated in SIC
5 Group Number 723, including only beauty shops; beauty
6 culture schools when providing beauty shop services;
7 hairdressers; and combined beauty and barber shops.

8 (b) Services of barber shops, which are primarily
9 engaged in furnishing barber and men's hair styling services
10 enumerated in SIC Group Number 724, including only barber
11 shops, men's hair stylists, and barber colleges when
12 providing barber shop services.

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1 (39) **Employee Leasing Services.** - To the extent
2 specified in paragraph (b), employee leasing services
3 described in paragraph (a) are exempt.

4 (a) Personnel supply services enumerated in SIC
5 Industry Number 7369, of providing the personnel to perform
6 a range of services in operating specified facilities, or
7 which provide a number of different continuing services on a
8 contract or fee basis, within another business (or
9 government) establishment or installation, including base
10 maintenance (providing personnel on continuing basis) and
11 facilities management, except computers.

12 (b) This exemption only applies to the extent that the
13 charge for such services consists of payroll and related
14 employment benefits paid or provided to the leased
15 employees. The portion of the charge that exceeds payroll
16 and related employment benefits paid or provided to the
17 leased employees is taxable.

18 (c) Not included in SIC Industry Number 7369, and thus
19 not eligible for this exemption but taxable as business
20 services under SIC Major Group 73 are;

21 1. Employment agencies;

22 2. Temporary help supply services, such as fashion
23 show service, labor pools, manpower pools, modeling service,
24 and usher service;

25 3. Establishments primarily providing one specialized
26 service, such as janitorial service, guard service,
27 management service; secretarial service, or both management
28 and staff to operate a business.

1 (40) News Services.-

2 Also exempt are news services enumerated in SIC Group

3 Number 735, as follows:

4 (a) News correspondents, independent;

5 (b) News features (syndicates, etc.);

6 (c) News pictures, gathering and distributing;

7 (d) News reporting services for newspapers and periodicals;

8 (e) News syndicates--nonprofit (membership);

9 (f) News syndicates--commercial (nonmembership);

10 (g) News ticker service; and

11 (h) Press services.

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1 7929, including:

- 2 1. Actors;
- 3 2. Classical music groups or artists;
- 4 3. Concert artists;
- 5 4. Concert organizations;
- 6 5. Dance bands;
- 7 6. Entertainers;
- 8 7. Entertainment groups;
- 9 8. Entertainers for restaurants, clubs, radio, and

10 TV;

- 11 9. Jazz music groups or artists;
- 12 10. Popular music groups or artists;
- 13 11. Symphony orchestras;
- 14 12. Magicians;
- 15 13. Orchestras.

16 (c) Bowling (duck pins, ten pins, etc.) alleys and
17 billiard and pool parlors, as enumerated in SIC Group Number
18 793.

19 (d) Professional Sports Clubs and Promoters, as
20 enumerated in SIC Group Number 794, including:

- 21 1. Sports promotion of arenas, boxing, wrestling,
22 athletic field operation;
- 23 2. Operators and promoters of professional and
24 semiprofessional sports (baseball, basketball, football, ice
25 hockey, soccer, etc.) clubs;
- 26 3. Managers of individual professional athletes;
- 27 4. Promoters of sports events;
- 28 5. Sports field operation; and
- 29 6. Stadiums (sports promotion).

30 (e) Racing, including track operation, as enumerated in
31 SIC Industry Number 7948, including:

- 32 1. Dragstrip operation;
- 33 2. Horses, breeding and racing;
- 34 3. Jockeys, horse racing;
- 35 4. Kennels, dog racing;

- 1 5. Motorcycle racing;
- 2 6. Race car drivers and owners;
- 3 7. Race horse owners;
- 4 8. Race track operation: horse, dog, auto, etc.
- 5 9. Operation of racing stables;
- 6 10. Speedway operation; and
- 7 11. Stock car racing.

8 (f) Public Golf Courses, enumerated in SIC Industry
9 Number 7992, open to the general public on a fee basis,
10 including both nonmembership golf clubs and public golf
11 courses.

12 (g) Amusement parks, enumerated in SIC Industry Number
13 7996, kiddie parks, etc., which group together and operate
14 in whole or in part a number of attractions, such as
15 mechanical rides, amusement devices, refreshment stands, and
16 picnic grounds, including:

- 17 1. Amusement centers and parks (not fairs, circuses,
18 or carnivals);
- 19 2. Amusement piers; and
- 20 3. Theme parks (amusement).

21 (h) Membership sports and recreation clubs, enumerated
22 in SIC Industry Number 7997, which are sports and recreation
23 clubs restricted to use by members and their guests,
24 including:

- 25 1. Athletic clubs and gymnasiums;
- 26 2. Aviation clubs;
- 27 3. Baseball clubs--little leagues;
- 28 4. Bathing beaches, membership;
- 29 5. Beach clubs, membership;
- 30 6. Boating clubs, membership;
- 31 7. Bridge clubs, membership;
- 32 8. Country clubs, membership;
- 33 9. Flying fields, maintained by aviation clubs;
- 34 10. Golf clubs, membership;
- 35 11. Gun clubs, membership;

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- 12. Hunt clubs, membership;
- 13. Recreation and sports club, membership;
- 14. Riding clubs, membership;
- 15. Shooting clubs, membership;
- 16. Swimming clubs, membership;
- 17. Tennis clubs, membership; a nd
- 18. Yacht clubs, membership.

(i) Miscellaneous Amusement and Recreation Services

enumerated in SIC Industry Number 7999, including:

- 1. Aerial tramways, amusement or scenic;
- 2. Amusement concessions;
- 3. Amusement rides;
- 4. Animal and reptile exhibits, commercial
- 5. Animal shows, in circuses, fairs, and carnivals;
- 6. Aquariums, commercial;
- 7. Art galleries, commercial;
- 8. Astrologers;
- 9. Baseball instruction schools;
- 10. Basketball instruction schools;
- 11. Bath houses, independently operated;
- 12. Bathing beaches, nonmembership;
- 13. Boat rental, pleasure;
- 14. Boats, party fishing: operation of
- 15. Bookies;
- 16. Bookmakers, race;
- 17. Botanical gardens, commercial;
- 18. Bowling instruction;
- 19. Bridge clubs, nonmembership;
- 20. Bridge instruction;
- 21. Cable lifts, amusement or scenic, operated
separately from lodges;
- 22. Canoe rental;
- 23. Carnival operation;
- 24. Cave operation;
- 25. Circus companies;

- 1 26. Concession operators, amusement devices and rides;
- 2 27. Day camps;
- 3 28. Exhibition operation;
- 4 29. Exposition operation;
- 5 30. Fairs, agricultural: operation of
- 6 31. Fireworks display service;
- 7 32. Fishing lakes, operation of
- 8 33. Fortune tellers;
- 9 34. Gambling establishments, not primarily operating
10 coin-operated machines;
- 11 35. Gambling machines, except coin-operated: operation
12 of;
- 13 36. Game parlors (not coin operated);
- 14 37. Games, teaching of;
- 15 38. Go cart raceway operation;
- 16 39. Go cart rentals;
- 17 40. Golf courses, miniature: operation of;
- 18 41. Golf driving ranges;
- 19 42. Golf, pitch-n-putt;
- 20 43. Golf professionals, not operating retail stores;
- 21 44. Gymnasiums, operation of: nonmembership;
- 22 45. Horse shows;
- 23 46. Houseboat rentals;
- 24 47. Hunting guides;
- 25 48. Judo instruction;
- 26 49. Karate instruction;
- 27 50. Motorcycle rental;
- 28 51. Museums, commercial;
- 29 52. Natural wonders, tourist attraction: commercial;
- 30 53. Observation tower operation;
- 31 54. Off-track betting;
- 32 55. Pack trains, for amusement;
- 33 56. Parachute training (for pleasure);
- 34 57. Phrenologists;
- 35 58. Physical culture schools (gymnasiums);

- 1 59. Picnic grounds operation;
- 2 60. Ping pong parlors;
- 3 61. Planetaria, commercial;
- 4 62. Rental of beach chairs and accessories;
- 5 63. Rental of bicycles;
- 6 64. Rental of golf carts;
- 7 65. Rental of twoboats and canoes;
- 8 66. Rental of saddlehorses;
- 9 67. Reptile or animal exhibits, commercial;
- 10 68. Riding academies and schools;
- 11 69. Riding stables;
- 12 70. Scenic railroads for amusement;
- 13 71. Shooting galleries;
- 14 72. Skating instruction, ice or roller;
- 15 73. Skating rink operation: ice or roller;
- 16 74. Slot car race tracks;
- 17 75. Sporting goods rental;
- 18 76. Sports instructors, professional;
- 19 77. Sports professionals;
- 20 78. Swimming pools;
- 21 79. Tennis clubs, nonmembership;
- 22 80. Tennis courts, outdoor and indoor: operation
- 23 of nonmembership;
- 24 81. Tennis professionals;
- 25 82. Ticket sales offices for sporting events,
- 26 contract;
- 27 83. Tourist attractions, natural wonder: commercial;
- 28 84. Tourist guides;
- 29 85. Trampoline operation;
- 30 86. Wax figure exhibitions;
- 31 87. Yoga instruction; and
- 32 88. Zoological gardens, commercial.
- 33 (j) Noncommercial Aquariums, Arboreta, Art Galleries,
- 34 Botanical Gardens, Museums, Planetaria, and Zoological
- 35 Gardens, enumerated in SIC Major Group 84.

1 (k) The statutory exemption from the tax on the sale or
2 use of services on which this subsection is based does not
3 exempt:

4 1. Admission charges from the tax on admissions levied
5 by s. 212.04, F.S. Example: There is a live theatrical
6 performance in a Florida city, for which actors are engaged
7 through casting agencies; independent contractors who are
8 expert in scenery, lighting, and other equipment services
9 are compensated and specialists in other theatrical services
10 are used. While this exemption is an exemption of these
11 services from the tax on the sale or use of services, it is
12 not an exemption from the tax on admissions to the
13 performance.

14 2. Membership fees from the tax on admissions levied
15 by s. 212.04, F.S. Example: A golf club owns a golf course
16 to which its members whose membership fees are current can
17 be admitted without further charge. While membership dues
18 and fees are exempt from the tax on the sale or use of
19 services, they are not exempt from the tax on admissions
20 levied by s. 212.04, F.S.

21 3. Sales of tangible personal property from the tax on
22 sales levied by s. 212.05, F.S. Example: It is necessary
23 to purchase tangible personal property to provide a service
24 that is exempt under this subsection from the tax on the
25 sale or use of services. This does not exempt the purchase
26 of that property from the tax on sales of tangible personal
27 property.

28 4. Use of coin-operated amusement devices.
29 Nothing contained herein shall be construed as exempting any
30 form of advertising.

1 (42) Bankruptcy Proceedings.-

2 Any services provided and paid for pursuant to court
3 order in a bankruptcy proceeding including but not limited
4 to:

- 5 1. Legal fees;
6 2. Trustee fees; and
7 3. Appraisal fees are exempt from tax.

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1 (43) Household Utility Services.-

2 (a) Also exempt are household utility services sold to
3 residential households or owners of residential models by
4 utility companies which pay the gross receipts tax imposed
5 under s. 203.01, F.S., or by liquefield petroleum gas
6 companies.

7 (b) Such services are exempt regardless of whether such
8 sales of services are separately metered and billed direct
9 to the residents or are metered and billed to the landlord.

10 (c) If any part of the services is used for a nonexempt
11 purpose, the entire sale is taxable. Example: A
12 householder decides to establish a cabinet making business
13 in his home, and uses electricity to operate the machinery
14 used in that business. The entire sale of electricity to
15 his home is no longer exempt.

1 (44) Registration Fees.-

2 Also exempt are convention and conference registration
3 fees.

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(45) Satellites, Etc.-

Also exempt are transportation services by satellite or launch vehicles, whether sponsored by governmental or non-governmental entities.

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1 (46) Impact Fees, Etc.-

2 Also exempt are impact fees and charges related to idle
3 plant capacity for access to sewerage utilities and
4 utilities subject to the gross receipts tax imposed pursuant
5 to Chapter 203, F.S.

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(47) Emergency Road Services.-

Also exempt are emergency road services, but only when the total consideration for the service is \$10 or less. If the consideration for the service is more than \$10.00, the transaction is fully taxable.

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1 (48) Construction Support Services.- Exempt are
2 construction support services purchased by a provider of
3 construction support services in furtherance of a contract
4 for such services. For purposes of this Rule "construction
5 support services" means architectural, engineering,
6 drafting, surveying, land planning, landscape design, and
7 interior design services, when such services directly relate
8 to the construction, alteration, improvement, or repair of
9 real property. This exemption shall apply only if:

10 (a) The purchaser of the service buys the service
11 pursuant to a written contract with the seller and such
12 contract identifies the client or customer for whom the
13 purchaser is buying the service:

14 (b) The purchaser of the service identifies the seller
15 of the service purchased in his charge for the service on
16 its subsequent sale; and

17 (c) The service will be taxed in a subsequent sale,
18 unless otherwise exempt.

1 (49) Newspaper Delivery Services.-

2 Also exempt are newspaper delivery services provided to
3 the publisher or printer of a newspaper. This exemption
4 applies only when the delivery service is provided by an
5 independent contractor. When provided by an employee of the
6 publisher or printer of a newspaper, the service is exempt
7 as a service by an employee (See Rule 12-ER-87-11(2)).

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9 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
10 Chapter 87-6 Laws of Florida.

11 Law Implemented Sections 2 and 3, Chapter 87-6, Laws of
12 Florida.

13 History - New 7-1-87.

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12-ER-87-13 **Financial Services.**

(1)(a) A "financial institution" means those institutions referred to by SIC Major Groups 60 and 61 of the 1972 Standard Industrial Classification Manual. This definition is not applicable to Rule 12-ER-87-12(33).

(b) SIC Major Groups 60 and 61 of the 1972 Standard Industrial Code Manual includes, but are ~~is~~ not limited to, establishments, such as:

1. Commercial banks;
2. Credit services;
3. Mortgage brokers; and
4. Personal finance companies.

(2)(a) Services provided by a financial institution are exempt, except as provided in paragraph (b).

(b) Taxable Services provided by financial institutions except when the provider is a nonresident entity or nonresident person as defined in Rule 3c-15.003, F.A.C., as it was effective on July 1, 1987 include the following:

1. The rental charge on safety deposit boxes and the use of depository bage;
2. The issuing of travelers checks, cashier's checks, bank drafts, or money orders;
3. The charges for copies of documents;
4. The charges for stop payment and return checks, unless due to insufficient funds;
5. The charges for service as personal representative of estates of decedents (except as provided in 12-ER-87-11(2)(d));
6. The charges for credit information and reporting services;
7. The fees charged for overdrafts, collections (as

1 enumerated in 12-ER-87-11(9)(b)13.), hold mail and
2 guardianship;

3 8. The charges for use of night deposit services
4 and vaults;

5 9. The charges for preparation of individual tax
6 returns and accounting services;

7 10. The charge for credit card and charge card
8 membership; and

9 11. The charge for data processing, not otherwise
10 exempt (See 12-ER-87-11(33)), except check processing and
11 check clearing services. Check processing and check
12 clearing service are considered exempt pursuant to this
13 subsection.

14 (3) The charge made to customers which includes both
15 taxable and exempt services, the total charge is taxable
16 unless the exempt service is separately stated.

17 Example: When a bank charges its customers a single price
18 per month which includes check processing, issuance of
19 travelers checks, issuance of cashier's checks, and other
20 services the total charge is taxable.

21 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
22 Chapter 87-6 Laws of Florida.

23 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
24 Florida.

25 History - New 7-1-87.
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DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

12-ER-87-14 Insurance Services.

(1)(a) The only payments for insurance that are taxable are premiums for title insurance that are in excess of 110 percent of the risk premium rate promulgated pursuant to s. 627.782, F.S., by the Department of Insurance. That Department's rules are in Chapter 4-21, Florida Administrative Code. All other consideration for insurance is exempt from the tax on sale or use of services (See Rule 12-ER-87-11(14)).

(b) Annuities are exempt as insurance.

(c) Also exempt are insurance services of agents and brokers and of insurance service companies. (See Rule 12-ER-87-11(14)(a) and (b)).

(d) Taxable as services, not exempt as insurance, are transactions that, though involving some assumption of risk, are, considered as a whole, more in the nature of sales or uses of services than insurance transactions (See Rule 12-ER-87-11(14)(f)).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

12-ER-87-15 Security and Commodity Broker Services.

(1)(a) Security and commodity broker services are exempt, except as provided in paragraph (b).

(b) The following security and commodity broker services are subject to tax.

1. The service of a person who advises on investments, but who is not an investment advisor within the definition of subsection (12), of section 517.021, F.S., in advising on investments in tangible or intangible personal property or real property;

2. A quotation service;

3. An exchange clearing house service;

4. Services relating to commitment of money or property in expectation of receiving an economic benefit not involving securities;

5. Accounting services.

(2) Expenses in effecting the transaction are taxable as part of the entire sales price of the sale of service as defined in section 212.02(21) F.S.

(3) This exemption shall not be construed to exempt any financial service taxable under other sections, or any other investment service which does not involve the transfer of securities or commodities, such as providing investment advice managing investments, or services as a trustee except for investment advisory services provided by a financial institution.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

12-ER-87-16 **Real Estate Housing, and Business
Brokerage Services.**

(1) Compensation for services relating to sales, leases, licenses, and other transactions concerned with real estate, housing, and business brokerage are taxable. Such taxable services include, but are not limited to, those listed in (a) through (h).

(a) Services of a broker, as that term is defined in paragraph (c) of section 475.01(1), Florida Statutes, which include appraising, auctioning, selling, exchanging, buying, or renting, or offering, attempting, or agreeing to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises, business opportunities, or real property or any interest concerning the same, including mineral rights or leases.

(b) Services of a managing entity, which manages condominiums, timesharing property, office buildings, apartments, or other types of housing or property.

(c) Services of marketers and marketing consultants, who formulate and implement marketing strategies and techniques.

(d) Services of a receiver, whether or not appointed by a court.

(e) Services of an escrow agent, whether such services are compensated by fees for services or by investment income on funds of another or others that are held by it in escrow.

(f) Services of a surveyor.

(g) Services of an investment advisor, who advises on investments in real estate or real estate and other types of property.

(h) Title services, such as, but not limited to, preparation of abstracts of title, title searches, etc.

1 (2) Compensated services to which this subsection
2 applies are taxable apart from and in addition to any tax
3 collectable by the service provider for himself as a dealer
4 or for another as a dealer on rentals, as to which see Rule
5 12A-1.061, and 12A-1.073, F.A.C.

6 (3) Real estate commissions are exempt only when the
7 property seller affirmatively demonstrates to the realtor
8 responsible for collecting the tax that at the time of
9 signing the initial listing contract on the real estate
10 offered for sale the property was assessed as
11 ~~seller resided thereon and was entitled to the homestead~~
12 property exemption pursuant to s. 196.031, F.S. (See
13 12-ER-87-11(24).

14 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
15 Chapter 87-6 Laws of Florida.

16 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
17 Florida.

18 History - New 7-1-87.
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12-ER-87-17 **Lobbying Services.**

(1) Effective July 1, 1987, persons engaged in the business of performing or providing, for compensation, activities to encourage the passage, defeat, or modification of legislation or to influence the decision of an individual legislator, a legislative committee or subcommittee, or entire legislative body, or representing for compensation on a regular basis an organization which has as one of its purposes the encouragement of the passage, defeat or modification of legislation or influencing legislation decisions, are performing or providing a taxable service. The tax also applies to a retainer fee paid for such lobbying service.

(2) The tax will apply to the total consideration paid for such lobbying service, even though the lobbying service charge includes payment of travel, telephone or other ~~often~~ related expenses whether as an included or separate item.

(3) Tax also applies to purchases by persons providing the taxable lobbying service including, but not limited to paper, supplies, office equipment, motor vehicles, telephones, meals, hotel and motel rentals, etc.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

12-ER-87-18 **Security and Detective Services.**

(1) Persons engaged in the business of providing security or detective services are performing taxable services.

(b) Security service are characterized as services provided by any person who is engaged in the business of providing a service, the purpose of which is to protect property from theft, vandalism or destruction; or individuals from physical attack or harassment is providing a "security service." Persons engaged in the following services are providing a taxable security service; the list is not exclusive: Rental of guard dogs, burglar and fire alarm systems; providing security guards, body guards and mobile patrols; and protection of computer systems against unauthorized penetration.

(c) Detective services are characterized as services provided by any person who engages in the business of providing a service for the purpose of obtaining information regarding any one or more of the following matters are engaged in the business of providing a "detective service", and their services are subject to tax: investigation of crims or wrongs done or threatened; the habits, conducts, movements, whereabouts, associations, transations, or reputation or character of any person; the credibility of witnesses or other persons; the investigation or recovery of lost or stolen property, or the cause, origin, or responsibility for fires, accidents, or injuries to property; the investigation of the truth or falsity of any statement or representation; the detection of deception; or the business of securing evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases. The services of a peace officer engaged privately in security or detection work are also subject to tax.

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Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
Florida.
History - New 7-1-87.

12-ER-87-12 **Taxable Services.**

(1)(a) The services enumerated in paragraphs (2)(a) through (2)(gg) shall not be construed as a comprehensive list of taxable services but rather a list of some of the services referred to by the 1972 Standard Industrial Manual classification as published by the Executive Office of the President, Office of Management and Budget, which services are totally or partially subject to tax under Chapter 212, as amended by Chapter 87-6, Laws of Florida.

(b) Unless a provision of Part I of Chapter 212, F.S., clearly provides otherwise, references to the SIC Code are intended to describe activities or services and not establishments. Such references shall not be construed to tax or exempt a service solely because it is performed by a person in a referenced establishment. Neither shall such references be construed to preclude taxation or an exemption for a service solely because it is performed by a person not in a referenced establishment.

(2) Emergency Rules 12-ER-87-13 through 12-ER-87-48 provide additional details regarding some of the services listed below:

(a) Agricultural services.

1. Animal specialty services-(Industry Number 0752-See 12ER-87(11)(3)), unless the services relate to agricultural products as defined in s. 618.01(1); and

2. Landscape and horticultural services (Group Number 078). (See 12-ER-87-22).

(b) Metal mining services - (Group Number 108), which includes, but is not limited to:

1. Boring test holes services;
2. Exploration metal services; and
3. Draining or pumping services.

(c) Non metallic mineral services - (Group Number 148),

1 which includes, but is not limited to:

- 2 1. Boring services;
- 3 2. Draining and pumping services;
- 4 3. Mine development services; and
- 5 4. Strip mining services.

6 (d) Building construction services - See 12-ER-87-31)

7 below (Major Group 15), which includes, but is not limited

8 to:

- 9 1. New construction services;
- 10 2. Alteration services;
- 11 3. Remodeling services;
- 12 4. Repair services; and
- 13 5. Renovating services;

14 (e) Heavy construction services other than building

15 construction services (Major Group 16). See 12ER-87-31.

16 Heavy construction services are construction services such

17 as those involving highways and streets, bridges, sewers,

18 railroads, irrigation projects, flood control projects,

19 marine construction, and similar work.

20 (f) Special trade construction services - (See

21 12ER-87-31. (Major Group 17), which includes, but is not

22 limited to:

- 23 1. Furnace services;
- 24 2. Plumbing services;
- 25 3. Refrigeration services; (See Rule
- 26 12A-1.016(4), F.A.C.)
- 27 4. Sheet metal services;
- 28 5. Air conditioning services; (See Rule
- 29 12A-1.016(4), F.A.C.)
- 30 6. Painting services;
- 31 7. Paper hanging services;
- 32 8. Decorating services;
- 33 9. Electrical services;
- 34 10. Burglar alarms services;
- 35 11. Masonry and stone setting services;
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- 12. Plastering services;
- 13. Carpentering and flooring services;
- 14. Earth moving and excavation services; (See Rule 12A-1.016, F.A.C.)
- 15. Antenna installation services; and
- 16. Fence installation services.

(g) Printing, Publishing, and Allied Services - (Major Group Number 27) - See Rules 12A-1.008, 12A-1.024(1), 12A-1.027, 12A-1.028, 12A-1.034(3), 12A-1.072(7)(11), F.A.C. (Major Group 27), which includes, but is not limited to:

- 1. Newspaper; publishing, publishing and printing;
- 2. Periodical; publishing, publishing and printing;
- 3. Books; publishing and printing;
- 4. Miscellaneous publishing; and
- 5. Service industries for the printing trade,

which include, but are not limited to:

- a. Advertisement typesetting services;
- b. Composition services, hand or machine;
- c. Typesetting services;
- d. Typographic composition services;
- e. Photoengraving services;
- f. Bookbinding services; and
- g. Engraving services.

(h) Coating, engraving, and allied services - (Group Number 347), which include, but are not limited to:

- (a) Buffing services;
- (b) Cleaning services;
- (c) Decontaminating services;
- (d) Depolishing services;
- (e) Polishing services; and
- (f) Sand blasting services.

(i) Local and suburban passenger transportation

1 services (Major Group 41). See 12ER-87-34.

2 (j) Motor Freight Transportation and Warehousing
3 Services (Major Group 42). See 12ER-87-34.

4 (k) Water transportation service (Major Group 44). See
5 12ER-87-34.

6 (l) Transportation by Air services (Major Group 45).
7 See 12ER-87-34.

8 (m) Transportation services - Major group as a whole.
9 (Major Group 47). See 12-ER-87-34.

10 (n) Communication services. (Major Group 48). See
11 12-ER-87-28.

12 (o) Electric, gas, and sanitary services. (Major Group
13 49).

14 1. Electrical services are taxable, pursuant to
15 Rule 12A-1.053;

16 2. Gas services are taxable, pursuant to Rule
17 12A-1.059;

18 3. Water services (the sale of water) is
19 specifically exempt under s. 212.08(4)(a)1., F.S. but this
20 does not include mineral or carbonated water.

21 4. See 12-ER-87-35 for taxable sales of sanitary
22 services, steam and air, and irrigation services.

23 (p) Banking service. (Major Group Number 60) See
24 12-ER-87-13.

25 (q) Credit Agencies other than Banks (Major Group
26 Number 61). See 12-ER-87-13.

27 (r) Security and commodity brokers, dealers, exchanges,
28 and services (Major Group Number 62) See 12-ER-87-15.

29 (s) Insurance (Major Group Number 63) See
30 12-ER-87-14.

31 (t) Insurance agents, brokers, and service (Major Group
32 Number 64) See 12-ER-87-14.

33 (u) Real estate (Major Group Number 65) See
34 12-ER-87-16.

35 (v) Combinations of real estate, insurance, loans, law
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1 offices (Major Group Number 66) See 12-ER-87-16.

2 (w) Holding and other investment offices (Major Group
3 Number 67) See 12-ER-87-13 and 12-ER-87-15.

4 (x) Personal services - (Major Group 72); except that
5 beauty and barbershop services enumerated in SIC Groups 723
6 and 724 and receipts from and coin operated laundries and
7 coin operated dry cleaner services enumerated in SIC
8 Industry Number 7215 are specifically exempt from tax.
9 Taxable services under Major Group 72 include, but are not
10 limited to:

11 1. Baby sitting bureau services (not private
12 household employment);

13 2. Beauty spas services;

14 3. Birth certificate agencies;

15 4. Car title and tag services to individuals;

16 5. Carpet, rug, and upholstery cleaning

17 services;

18 6. Check room concessions or services;

19 7. Clothing rental services;

20 8. Coin-operated service machine operation;

21 scales, shoe shine, lockers;

22 9. Comfort station operation;

23 10. Costume rental;

24 11. Debt counseling or adjustment service to

25 individuals;

26 12. Dress suit rental;

27 13. Dressmaking service on material owned by

28 individual customers;

29 14. Dry cleaning services;

30 15. Escort services;

31 16. Genealogical investigation services;

32 17. Health clubs or spas services;

33 18. Laundry services;

34 19. Locker rental, except cold storage;

35 20. Marriage bureau services;

- 1 21. Massage parlor services;
- 2 22. Pillow rental services;
- 3 23. Porter services;
- 4 24. Portrait copying services;
- 5 25. Reducing salon services;
- 6 26. Rental of items for personal use by
7 individuals, except for recreation;
- 8 27. Rest room operation services;
- 9 28. Scalp treatment services;
- 10 29. Seamstress services;
- 11 30. Shopping services;
- 12 31. Slenderizing salon services;
- 13 32. Spas, health: except resort with lodging
14 services;
- 15 33. Steam bath services;
- 16 34. Stitching, on a custom basis;
- 17 35. Tattoo parlor services;
- 18 36. Tax return preparation services;
- 19 37. Turkish bath services;
- 20 38. Valet parking services;
- 21 39. Valet services; See Rule 12A-1.042, F.A.C.
- 22 40. Wardrobe services, except theatrical; and
- 23 41. Wedding chapels, privately operated.

24 (y) Business Services (Major Group 73), which include
25 but are not limited to:

- 26 1. Advertising services; see 12-ER-87-44.
- 27 2. Adjustment bureaus, except insurance
28 adjustment agencies;
- 29 3. Collection agency services (accounts),
30 except for real estate, see 12-ER-87-41;
- 31 4. Consumer credit reporting bureaus;
- 32 5. Credit bureaus and agencies;
- 33 6. Credit clearinghouses;
- 34 7. Mercantile credit reporting bureaus;
- 35 8. Address list compilers;

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- 9. Addressing services;
- 10. Addressographing services;
- 11. Direct mail advertising service;
- 12. Mail advertising service;
- 13. Mailing list compilers;
- 14. Mailing services;
- 15. Blueprinting services;
- 16. Photocopying services;
- 17. Film strips and slides;
- 18. Graphic arts and related design services;
- 19. Photographic studio services, commercial;
- 20. Silk screen design services;
- 21. Slide film producers services;
- 22. Still and slide film producers services;
- 23. Aerial photographic service, except
mapmaking;
- 24. Chart and graph design services;
- 25. Commercial art and illustration services;
- 26. Commercial photography services;
- 27. Creative services to advertising industry,
except writers;
- 28. Court reporting services;
- 29. Duplicating services: except printing,
blueprinting, and photocopying;
- 30. Letter writing services;
- 31. Mimeographing services;
- 32. Multigraphing services;
- 33. Multilithing services;
- 34. Public stenographers;
- 35. Stenographic services;
- 36. Typing services;
- 37. Window cleaning services;
- 38. Disinfecting and exterminating services;
- 39. News syndicates services, including, but not
limited to, news correspondents, independent, news features,

1 news pictures, gathering and distributing, news reporting
2 services for newspapers and periodicals, news ticker
3 service, and press service (news syndicate) See Rule
4 12-ER-87-11(40);

5 40. Janitorial and cleaning services.

6 41. Employment agency services, see 12-ER-87-21;

7 42. Temporary help supply services, see
8 12-ER-87-21;

9 43. Computer and data processing services, see
10 12-ER-87-29;

11 44. Research and development laboratory services,
12 which include, but are not limited to, business analysis,
13 financial management service to businesses, lobbyists,
14 market research, and personnel management;

15 45. Detective agencies and protective services,
16 see 12-ER-87-18;

17 46. Trading stamp services;

18 47. Miscellaneous business services, which
19 include, but are not limited to:

20 a. auctioneering services;

21 b. authors' agent and broker services;

22 c. bondsmen services;

23 d. business brokers services;

24 e. charge account services;

25 f. correct time services;

26 g. credit card services (collection by
27 individual firm);

28 h. decoration services for special events;

29 i. directories, telephone: distribution on
30 a contract basis;

31 j. handwriting analysis services;

32 k. interior decorating services, except
33 painters and paperhangers;

34 l. lecture bureaus;

35 m. liquidators of merchandise on a contract

1 basis services;

2 n. microfilm recording and developing
3 services;

4 o. notary public services;

5 p. repossession services;

6 q. tax collection agencies services:
7 collecting for a city, county, or state;

8 r. welcome wagon services; and

9 t. yacht brokers services.

10 (z) Automotive Services. See Rules 12A-1.006,
11 12A-1.1007, 12A-1.073 and 12-ER-87-26, (Major Group 75),
12 which include, but are not limited to:

13 1. Car washes, including self service or
14 automatic;

15 2. Detailing autos;

16 3. Inspection services; and

17 4. Towing services:

18 (aa) Miscellaneous repair services. See Rule
19 12A-1.1006 and 12A-1.016, F.A.C. (Major Group Number 76),
20 which include but are not limited to:

21 1. armature and electric motor repair;

22 2. Cesspool cleaning, see 12-ER-87-35;

23 3. Cleaning and reglazing baking pans;

24 4. Cleaning bricks;

25 5. Furnace and chimney cleaning;

26 6. Sharpening and repairing knives and tools;

27 7. Tank and boiler cleaning services; and

28 8. Taxidermists;

29 (bb) Motion picture services. See Rule 12A-1.085, and
30 12-ER-87-45.

31 (cc) Amusement and recreation services, except motion
32 picture (Major Group 79). See 12-ER-87-30.

33 (dd) Legal Services (Major Group 81). (See
34 12-ER-87-11(25)).

35 (ee) Educational services in Industry Number 8299,
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1 except those services provided by bible schools and the sale
2 of educational services by any nonprofit religious
3 organization described in SIC Industry Number 866. (See
4 12-ER-87-11(7)).

5 (ff) Museums, art galleries, botanical and zoological
6 gardens. See Rule 12A-1.005, F.A.C. Major Group 84
7 includes but is not limited to:

- 8 1. Art galleries, noncommercial;
- 9 2. Museums, noncommercial;
- 10 3. Planetaria, noncommercial;
- 11 4. Aquariums, noncommercial;
- 12 5. Arboreta, noncommercial;
- 13 6. Botanical gardens, noncommercial; and
- 14 7. Zoological gardens, noncommercial;

15 (gg) Membership Organizations (Major Group 86). See
16 12ER-87-33.

17 (hh) Miscellaneous services. (Major Group Number 89)
18 include, but are not limited to:

- 19 1. Architectural services;
- 20 2. Designing services: ship, boat, machine, and
21 product;
- 22 3. Engineering services: Industrial, civil,
23 electrical, mechanical, design, etc.;
- 24 4. Marine engineering services;
- 25 5. Petroleum engineering services;
- 26 6. Photogrammetric engineering services;
- 27 7. Surveying services: Land, water, and aerial;
- 28 8. Archeological expeditions services;
- 29 9. Educational research agencies, noncommercial;
- 30 10. Medical research services, noncommercial
31 services; (cancer, TB, etc.);
- 32 11. Research agencies, scientific and educational
33 services: noncommercial;
- 34 12. Research institutes: Brookings, Carnegie,
35 NBER, etc.;

- 1 13. Scientific research agencies, noncommercial;
- 2 14. Social research, noncommercial;
- 3 15. Accounting services;
- 4 16. Auditing services;
- 5 17. Billing and bookkeeping services;
- 6 18. Certified public accountants services;
- 7 19. Payroll accounting services;
- 8 20. Public accountants, certified;
- 9 21. Actuaries, consulting;
- 10 22. Advertising copy, writers of;
- 11 23. Announcers, radio and television service;
- 12 24. Art restoration;
- 13 25. Artists, excluding commercial and medical
14 artists;
- 15 26. Artists studios, except commercial and
16 medical;
- 17 27. Authors;
- 18 28. Chemists, consulting: not connected with
19 business service laboratories;
- 20 29. Christian science lecturers;
- 21 30. Cloud seedings (artificial nucleation);
- 22 31. Consultants, nuclear, not connected with
23 business service laboratories;
- 24 32. Entomologists, consulting: not with business
25 service laboratories;
- 26 33. Geologists, consulting: not connected with
27 business service laboratories;
- 28 34. Ghost writing;
- 29 35. Greeting cards, hand painting of;
- 30 36. Inventors;
- 31 37. Lecturers;
- 32 38. Music arrangers;
- 33 39. Newspaper columnists;
- 34 40. Physicists, consulting: not connected with
35 business service laboratories;
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- 41. Psychologists, Industrial;
- 42. Radio commentators;
- 43. Sculptors studios;
- 44. Songwriters;
- 45. Stained glass artists;
- 46. Weather forecasters;
- 47. Weather modification (rainmakers); and
- 48. Writers.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33 of Chapter 87-6 Laws of Florida.
Law Implemented Section 3, 6, 7, 9, 10, 12, 23 and 30, of Chapter 87-6, Laws of Florida.

12-ER-87-19 **Janitorial and Cleaning Services.**

(1)(a) Persons engaged in the business of performing or providing janitorial service, building maintenance and cleaning, are performing or providing a taxable service, including the services performed or provided in a dwelling. "Janitorial services" means the type of cleaning services performed by a janitor in the regular course of duty, whether such services are performed individually, under separate contract, or are included within a general contract to perform a combination of such services. The term includes, but is not limited to, contracts to perform ~~interior~~ window washing, floor cleaning, vacuuming and waxing, the cleaning of ~~interior~~ walls and woodwork, and cleaning of restrooms and furnaces. Also included within the meaning of the term is the movement of furniture and other items of personal property within a building.

(b) Workers who are employed by private households to serve on or about the premises of private households in occupations usually considered as domestic service, such as babysitters, maids, butlers, cooks, gardeners, etc., engage in a service not specifically taxed under Ch. 86-7, F.S., Laws of Florida. These services, noted in SIC Major Group 88, are therefore not taxable.

(2) If janitorial services are required as a condition of commercial rental and not separately stated or accounted for on the invoices or other billings, they are part of the consideration for the rental and taxable under s. 212.031, F.S.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

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12-ER-87-20 **Flying Services.** Persons engaged in the business of teaching a course of instruction in the art of operating and flying an airplane are performing a taxable service. Taxable flying service shall also include all other types of flying service the taxation of which is not prohibited by Federal law. However, agricultural aerial dusting and spraying services are exempt as an agricultural service.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

12-ER-87-21 **Personnel Supply Services.**

(1) Charges made by those enumerated in SIC Group Number 736, relating to Personnel Supply Services are taxable.

(2) Those enumerated in this group include, but are not limited to:

(a) Employment Agencies;

(b) Temporary Help Supply Services; and

(c) Personnel Supply Services.

(3) Employment Agency Services - Employment agencies engaged in the business of providing listings of available employment or aiding others in any way to procure employment are performing or providing a taxable service. The aforementioned services are subject to tax, regardless of whether they are rendered for the prospective employee or prospective employer.

(4) Those services related to the casting of motion pictures (refer to s. 212.0592(18)(a)1. of Chapter 87-6, Laws of Florida) are exempt.

(5) When services provided by an employment agency are sold to or purchased by an individual, the service is considered to be performed at the physical location of the agency and not where the actual place of employment is located.

(6) When services provided by an employment agency are sold to or purchased by a business the service is considered to be performed at the location of the place of business seeking the employment (whether within this state or outside the state).

(7) Any other services performed by those businesses enumerated in SIC Group Number 736 (i.e. counseling, training, etc.) will be taxed based on the physical location where such services are performed.

1 (8) The service of providing temporary help, such as
2 labor pools, manpower pools and modeling services is
3 taxable.

4 (9) Employee leasing services enumerated in SIC
5 Industry Number 7369 must pay tax on all charges made for
6 their service, less the leased employees salary and/or
7 benefits paid to or provided the leased employee. (See Rule
8 12-ER-87-11(39))

9 (10) When any personnel related services are sold exempt
10 from tax, the seller of such services must secure an
11 properly executed Exempt Service Purchase Permit or an
12 Exempt Service Purchase Affidavit.

13 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
14 Chapter 87-6 Laws of Florida.

15 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
16 Florida.

17 History - New 7-1-87.
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2 12-ER-87-22 Landscape and Horticultural Services.

3 (1)(a) Persons engaged in the business of landscape and
4 horticultural service are performing or providing a taxable
5 service. Landscape and horticultural services include, but
6 are not limited to, the following services:

- 7 1. Garden planning;
- 8 2. Horticultural advisory or counseling services;
- 9 3. Landscape architects;
- 10 4. Landscape counseling;
- 11 5. Landscape planning;
- 12 6. Bermuda sprigging services;
- 13 7. Cemetery upkeep, independent;
- 14 8. Garden maintenance;
- 15 9. Garden planting;
- 16 10. Lawn care;
- 17 11. Lawn fertilizing services;
- 18 12. Lawn mowing services;
- 19 13. Lawn sprigging services;
- 20 14. Mowing highway center strips and edges;
- 21 15. Arborist services;
- 22 16. Ornamental bush planting, pruning, bracing,
23 spraying, and surgery;
- 24 17. Ornamental tree planting, pruning, bracing,
25 spraying, and surgery;
- 26 18. Public utility line tree trimming services;

27 (b) A person engaged in the business of performing lawn
28 and garden services is the ultimate consumer of equipment,
29 materials and supplies he uses in providing his services,
30 unless the materials (not equipment and supplies) are
31 transferred to the customer in conjunction with the
32 performance of the service in a form and quantity in which a
33 fixed or definite sales price can be ascribed and in a form
34 and quantity typically associated with the sales of such
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1 property. (See 12-ER-87-5(3).)

2 (2) Lawn and garden care services provided by someone
3 who does not hold himself out as engaged in the business of
4 providing or performing lawn and garden services will be
5 exempt as an occasional or isolated service transaction.

6 For example: A teenager mows the grass for his neighbor for
7 compensation. Unless the teenager is employed by a business
8 establishment to perform this service or has established his
9 own business, the charge made by the teenager will qualify
10 as an occasional or isolated service.

11 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
12 Chapter 87-6 Laws of Florida.

13 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
14 Florida.

15 History - New 7-1-87.
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2 12-ER-87-23 Services Performed or Provided by a
3 Governmental Entity.

4 (1) Most services performed or provided by governmental
5 entities for a fee are exempt from tax on the sales or use
6 of services. (See 12-ER-87-11(8).)

7 (2) Taxable services performed or provided by a
8 governmental entity include, but are not limited to:

9 (a) Utility services sold to other than residential
10 households or owners of residential models;

11 (b) Sewerage services, including hook-up ~~fees or impact~~
12 ~~fees~~ paid for such services, except when sold to residential
13 households or owners of residential models and except as
14 provided in Rule 12-ER-87-11(20);

15 (c) Garbage, except where the service is sold to
16 residential households or owners of residential models.

17 (2)(a) Where the state or a local governmental agency
18 leases or grants a license to use recreational facilities to
19 any person for the purpose of that person sponsoring or
20 participating in games or tournaments, and that person
21 charges others to participate or to view such events, both
22 the charge for the use of the facility and the charge the
23 person makes to others, is taxable. The person making such
24 charge is required to either:

25 1. Register as a dealer to collect and remit the tax;
26 or

27 2. Collect the tax and turn same over to the state or
28 local government, whereby the governmental agency will be
29 required to remit the tax. If the taxes are turned over to
30 the governmental agency for remitting, the person doing so
31 must:

32 a. Submit documentation to the governmental agency
33 showing total receipts collected on such event(s) and submit
34 the amount of tax due.

1 b. Submit documentation and tax to the governmental
2 agency at the close of the event(s) or on the next workday.

3 c. Keep documentation for ~~5~~ years to show total
4 receipts, tax collected, and amount turned over to the
5 governmental agency.

6 d. The governmental agency will not be held liable for
7 taxes that are due but not collected and turned over to the
8 governmental agency.

9 e. The governmental agency will be liable for
10 remitting all taxes turned over to it, less the dealer's
11 collection allowance.

12 (b) Admissions to events sponsored by organizations
13 qualifying under 501(c)(3) or described in s. 170(c) of the
14 Internal Revenue Code are subject to tax.

15 (3) The lease, sublease, or rental to a person
16 providing food and drink concessionaire services within the
17 premises of an airport, a movie theater, a business operated
18 under a permit issued pursuant to chapter 550 (dog and horse
19 tracks) or Chapter 551 (frontons), or any publicly owned
20 arena, sports stadium, convention hall, or exhibition hall
21 is exempt from tax.

22 Specific Authority 212.17(6), 212.18(2) FS.; Section 33,
23 Chapter 87-6, Laws of Florida.
24 Law Implemented Sections 2, 3, 7 and 8, Chapter 87-6, Laws
25 of Florida.

26 History New 7-1-87.

12-ER-87-24 **Water Conditioning Services.**

(1) The charge for providing water conditioning (soft water service) is taxable. The tax will apply to the total consideration paid for such service.

(2) The periodic service fee charged by an establishment which services water conditioners owned by others will be taxable.

(3) An establishment which provides a water conditioning service or services will owe tax on all materials and supplies, i.e., tanks, minerals and other equipment purchased to be used in providing such service, unless such materials are separately billed or actually sold to the customer.

(4) Charges for deionization services are taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

2 12-ER-87-25 Tree Trimming And Removal Services.

3 (1) Persons engaged in the business of tree trimming
4 and removal are performing or providing a taxable service.
5 Persons engaged in "stump removal" are engaged in a taxable
6 service, as are persons engaged in the removal of any other
7 portion of a tree, such as the branches or trunk. The
8 trimming or removal of any shrub which has a woody main stem
9 or trunk with branches shall constitute tree trimming or
10 removal and the charge for the trimming or removal of such a
11 shrub shall be subject to tax.

12 (2) Tree trimming or tree removal performed as an
13 agricultural service as provided in Major Group 07 or as a
14 forestry service under Group Number 085 of the 1972 S.I.C.
15 manual are not taxable. Examples of this include pruning
16 agricultural orchards, removing orchard trees, thinning pine
17 forests, etc.

18 (3) The establishment performing the tree trimming and
19 tree removal service owes tax on all machinery and
20 equipment, materials, supplies, vehicles, bucket trucks,
21 tractors, bulldozers, etc., purchased for use in performing
22 this service.

23 (4) Timber cutting, harvesting, estimating, and
24 transportation services related to those activities
25 enumerated in S.I.C. Group Numbers 241 and 242 are exempt.
26
27 Specific Authority 212.17(6), 212.18(2) FS.; Section 33,
28 Chapter 87-6, Laws of Florida.
29 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
30 Florida.
31 History - New 7-1-87.

12-ER-87-26 **Automotive Services.**

(1)(a) The charge for performing or providing automotive services is taxable. Taxable automotive service charges include, but are not limited to the following:

1. The charge made for washing a motor vehicle including a self service or automated facility.
2. The charge for detailing a motor vehicle.
3. The service charge for inspecting a motor vehicle regardless of whether repairs or parts are rendered in conjunction with the inspection.
4. The charge made for repairing a motor vehicle or performing diagnostic tests regardless of whether such repair or test requires the use of any parts including lubricants by the repairman.
5. The charge made for towing a motor vehicle regardless of whether the towing company performs any subsequent repairs to the motor vehicle except as provided in Rule 12-ER-87-11(47).
6. The charge for alignment regardless of whether parts are used in performing the alignment.

(b) For purposes of this rule "automotive services" means services performed or provided by establishments engaged in furnishing automotive repair, fueling, rental, leasing and parking services to the general public.

Specific Authority 212.17(6), 212.18(2) FS; Section 33, Chapter 87-6, Laws of Florida.

Law Implemented Sections 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

2 12-ER-87-27 Coin Operated Laundries and Coin Operated
3 Dry Cleaners.

4 (1) Effective July 1, 1987, receipts from coin
5 operated washing machines, coin operated dryers and coin
6 operated dry cleaning equipment are exempt from tax.

7 (2) All receipts from coin operated laundries and coin
8 operated dry cleaners shall remain taxable until July 1,
9 1987.

10 (3) The tax on the receipts from coin operated
11 laundries and coin operated dry cleaners must be remitted by
12 dealers on their June tax return due July 20, 1987.

13 (4) Effective July 1, 1987, owners, or operators of
14 coin operated laundry and dry cleaning equipment must pay
15 sales or use tax on the purchase or lease of such equipment,
16 as well as repair of such equipment.

17 (5) Resale certificates extended by owners or operators
18 of coin operated laundry and dry cleaning equipment to
19 purchase, lease, or repair such equipment tax exempt are not
20 valid after July 1, 1987. The resale certificate must be
21 rescinded by the owner or operator, and the appropriate tax
22 remitted on purchases, leases or repairs made after July 1,
23 1987.

24 (6) Operators of vending machines which are not
25 equipped with tax collecting devices and from which soap,
26 bleach, fabric softener or similar items are dispensed for
27 10 cents or more shall remit tax at the rate of 6.25 percent
28 of gross sales. Purchases of these items for resale are
29 exempt provided a properly executed resale certificate is
30 extended to the seller at the time of purchase.

31 (7) When coin operated laundry and dry cleaning
32 equipment is placed on real property under a contract or
33 similar provision which grants the equipment owner the right
34 to use or occupy such real property, the portion of the
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proceeds from the operation of the machines paid to the owner, lessor or other person granting the machine owner or operator the right to use or occupy the real property is taxable.

Specific Authority 212.17(6), 212.18(2) FS; Section 33, Chapter 87-6, Laws of Florida.
Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of Florida.
History - New 7-1-87.

12-ER-87-28 **Communication Services.**

(1) Charges made for providing communication services are taxable. For purpose of this subsection, "Communication Services" means those services referred to by Major Group 48 of the SIC manual, which include, but are not limited to:

- (a) Telephone communications (wire or radio);
- (b) Telegraph communication (wire or radio);
- (c) Radio and television broadcasting;
- (d) Stock ticker service;
- (e) Telephone answering services;
- (f) Telephoto service;
- (g) Teletypewriter services;
- (h) Cablevision services;
- (i) Radar and Missile tracking services;
- (j) Telecommunication services; and
- (k) Transradio press service.
- (l) Telegraph cable service.

(2) The sales and use tax on services imposed by this subsection shall not be construed to impose an additional tax on transactions taxable pursuant to s. 212.05(1)(e), F.S. (See also Rule 12A-1.046, F.A.C.)

(3) A sale, to other than an end user, of telecommunication services consisting of a right of access for which an access charge, as defined in s. 203.012(1), is imposed, is a sale for resale.

(4) The charge for talent fees used by radio stations are taxable unless exempt pursuant to s. 212.08(12), F.S., (see Rule 12A-1.085 for partial exemption for master tapes or master records embodying sound).

(5) Line charge fees paid by radio stations are taxable.

(6) Charges, membership fees or license fees required to receive services from news syndicates including but not

1 limited to AP, UPI, Reuters or other like services are
2 exempt. taxable.

3 (7) All remote database services accessed by telephone
4 communications are taxable. Examples of this include but
5 are not limited to, Westlaw, Lexis, Dow Jones Report, Plato,
6 etc.

7 Specific Authority 212.17(6), 212.18(2) FS; Section 33;
8 Chapter 87-6, Laws of Florida.

9 Law Implemented Sections 1, 3, 7 and 10, Chapter 87-6, Laws
10 of Florida.

11 History - New 7-1-87.
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2 12-ER-87-29 Computer Services.

3 (1) The charges made for computer services are taxable.

4 Computer services mean those services referred to in Group
5 Number 737 of the SIC Manual, which include, but are not
6 limited to:

- 7 1. Computer systems analysis and design;
8 2. Development of computer programs or systems;
9 3. Programming services;
10 4. Systems engineering;
11 5. Data processing services;
12 6. Computer time sharing;
13 7. Computer time leasing or rental;
14 8. Computer equipment repair and maintenance;
15 9. Computer consultants; and
16 10. Tape recertification service.

17 (2) Computer technician charges for customized computer
18 software are taxable.

19 (3) The charge for analysis, design, and development of
20 computer programs or systems is taxable.

21 (4) The charge made for a bookkeeping service, such as
22 furnishing of financial statements, payrolls, tax reports,
23 accounts receivable and accounts payable statements, etc.,
24 is taxable.

25 (5) The charge for key-punching is taxable.

26 (6) The charge for repairs or maintenance of equipment
27 in which labor only is required of computer equipment is
28 taxable.

29 (7) When computers are accessed by customers through
30 terminal devices which are connected to the computer, each
31 customer is in effect using a portion of the computer and
32 the charge for such computer usage is subject to tax. A
33 customer is able to compile programs, provide a variety of
34 computational results printed out on his terminal and keep
35

1 data stored within the computer file for future use. This
2 produces basically the same results as if the customer had
3 processed the same data on his own computer; i.e., the
4 customer performs the tasks of entering data into the
5 computer and all processing is accomplished under his
6 control. The charge for such use of the computer may
7 include, among other things:

8 (a) Average amount of computer storage used.

9 (b) Computations performed by the computer.

10 (c) Time connected to the computer.

11 These charges are commonly referred to as "time
12 sharing". For the purpose of this rule, when the computer
13 is located in Florida the charges are construed to be for
14 rental of tangible personal property. When the computer is
15 located outside the state the charges shall be construed to
16 be for a service.

17 (8) Automatic teller machines (ATM) services to the
18 general public are considered to be financial services and
19 are exempt. Computer services purchased by providers of ATM
20 services are taxable except as provided in Rule
21 12-ER-87-11(33).

22 (9) All charges for remote database services are
23 taxable.

24 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
25 Chapter 87-6 Laws of Florida.
26 Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
27 Florida.
28 History - New 7-1-87.

2 12-ER-87-30 Amusement and Recreation Services, except
3 Motion Pictures.

4 (1) Amusement and Recreational services referred to in
5 SIC Major Group 79 are subject to tax except as provided in
6 Rule 12-ER-87-11(41).

7 (2) Coin-operated Amusement Devices.

8 (a) Charges for amusement devices, including but not
9 limited to such as, juke boxes, pinball machines, mechanical
10 games, video games, mini theaters, and similar types of
11 amusement equipment are subject to tax.

12 (b) Owners or operators of coin-operated amusement
13 devices which are not equipped with tax collecting devices
14 are required to remit tax at the rate of 6.75 percent of
15 gross sales of each machine. To compute the correct amount
16 of tax due, the owner or operator of the coin-operated
17 amusement device should divide his total receipts from his
18 devices by 1.0675 to compute their gross sales and then
19 subtract their gross sales from total receipts to arrive at
20 the amount of tax due. This 6.75 percent tax rate
21 recognizes multiple transactions.

22 (c) The sale of a ticket, coupon, token, card, etc.
23 which entitles the purchaser to use an amusement device is
24 taxable. When tickets, coupons tokens, cards, etc. are sold
25 through a coin operated vending device the 6.75 percent tax
26 rate will apply to the gross sales from such machines (see
27 paragraph b) above).

28 (3) The purchase of amusement machines is taxable,
29 unless purchased exclusively for rental (see Rule
30 12A-1.044(4), F.A.C.).

31 (4) All consideration due and payable by a machine
32 owner for the privilege of use, occupancy, or the right to
33 use or occupy any real property for any purpose is subject
34 to tax. The machine owner actually occupying, using or
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1 entitled to use any such real property shall pay the tax to
2 his immediate landlord or other such person granted the
3 right to such machine owner to occupy or use such real
4 property.

5 (5) When amusement machines are placed on location by
6 the owner under a contract whereby he receives a portion of
7 the proceeds and location operator receives a portion, the
8 percentage the machine owner receives is rental income and
9 is taxable. This tax is to be collected by the machine
10 owner from the location owner. (See Rule 12A-1.044, F.A.C.)
11 The service of repairing machines is taxable, however the
12 purchase of parts to repair the machines is exempt provided
13 that the parts are separately stated on the repair invoice.
14 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33 of
15 Chapter 87-6 Laws of Florida.
16 Law Implemented Sections 3 and 7, of Chapter 87-6, Laws of
17 Florida.

12-ER-87-31 **Construction Services.**

(1) ~~Construction Services.~~ Effective July 1, 1987, contractors who repair, alter, improve, and construct real property are subject to the following provisions for sales and use tax purposes:

(a) There is no occasional or isolated sale of construction services.

(b) There is no sale for resale of construction services; and

(c) Contractors and subcontractors are considered the ultimate or final consumer of building materials they purchase or use in repairing, altering, improving, or constructing real property regardless of whether the construction services are taxable or exempt.

(2) Effective July 1, 1987, this rule shall nullify all past special tax provisions granted to contractors to the extent that they are in conflict with this rule whereby the contractors were given an option of keeping detailed cost accounting records and remitting the proper tax, or accruing and remitting tax on a certain percentage of the total contract price, for heating and air conditioning, roofing and sheet metal, septic tank, glass and mirror contracts, etc., are repealed and revoked.

(3) Rules 12A-1.051 and 12A-1.094, F.A.C., do not apply to contractors who are subject to the provisions of this rule.

(4)(a) The following provisions of Chapter 212, shall not apply to the tax on construction services:

1. The definition of "sales price" pursuant to s. 212.02(21);

2. The provisions for the collection and remittance of tax as prescribed by s. 212.059(3);

3. The provision regarding the time the tax is due

1 pursuant to s. 212.059(4);

2 4. Those sections regarding the taxation of
3 transactions previously taxed, specifically s. 212.0591(4);

4 5. The provision regarding the separation of taxable
5 and exempt services when invoiced pursuant to s.
6 212.0591(7);

7 6. The provision regarding the separation of services
8 and real property pursuant to 212.0591(6);

9 7. The provision regarding services sold to a
10 partnership pursuant to 212.0592(4) and;

11 8. The provision regarding services sold between
12 members of affiliated groups pursuant to 212.0592(5).

13 (b) This rule governs the taxability of the purchase or use
14 of construction services and the purchase or use of tangible
15 personal property and the use of products manufactured or
16 fabricated by contractors for their own use in the
17 performance of public works and nonpublic works contracts.

18 (5) In cases of written contracts which were signed
19 prior to May 1, 1987, or offers submitted prior to such date
20 which are binding on the offeror and are accepted, or
21 contracts which are funded by government bonds sold before
22 May 1, 1987, or contracted prior to such date to be sold,
23 ~~but not including any change orders executed on or after~~
24 ~~such date,~~ for constructing improvements to real property,
25 the prime contractor responsible for performing the contract
26 shall not be required to remit any tax on the contractor's
27 services for that portion of the contract services purchased
28 ~~performed~~ prior to June 30, 1989~~8~~, provided that:

29 (a) It is the responsibility of the prime contractor to
30 remit tax;

31 (b) The purchase of the service for which the tax is
32 not being remitted is necessary to complete the contract and
33 the tax cannot be legally collected from the principal and
34 cannot be included in the price charged the principal under
35

1 the terms of the contract. Types of contracts which may
2 come under this provision are "lump sum", "fixed fee," or
3 "guarantee price" contracts. In "cost plus" type contracts
4 and "contracts whereby the contractor or subcontractor has
5 agreed~~s~~ to sell specifically described and itemized
6 materials at an agreed price or at the regular retail price
7 ~~and~~ has agreed to complete the work on the basis of time
8 consumed", the contractor can normally include the price of
9 the tax he pays or accrues to the final purchaser.

10 (c) If the prime contractor cannot legally collect the
11 tax from the principal, the prime contractor must submit an
12 application with his first tax return in which the tax is
13 not remitted pursuant to this subsection to the Department
14 of Revenue for the specific contract(s) in question. The
15 application must contain:

16 1. a copy of each written contract, or if such
17 contract document is voluminous, a statement explaining the
18 scope of the contract, with other pertinent information,
19 such as, the name of the parties, contract number, date of
20 the contract and a copy of the signature page;

21 2. a schedule of the amount of tax that would have
22 been collected if the construction services were not
23 precluded from taxation because the contract was executed
24 prior to May 1, 1987;

25 3. the anticipated date of completion of the
26 contract;

27 4. an estimate of the value of services expected to be
28 performed under the contract subsequent to June 30, 1989;
29 and

30 5. a sworn statement signed by the applicant or his
31 representative, attesting to the validity of the
32 application.

33 (d) The above information must be submitted on each
34 subsequent tax return in which taxes are not remitted
35 pursuant to the specific contract(s).

1 (e) Effective June 30, 1989, and thereafter, the
2 exemption provided in paragraph (c) above shall expire and
3 contractor's services provided on or after such date shall
4 be subject to tax.

5 (f) The above exemption does not apply to change orders
6 or amendments to the original contract signed or executed on
7 or after May 1, 1987, which materially effect the cost of
8 the construction project or requires a new building permit
9 to be drawn. For purposes of this paragraph, change orders
10 or amendments materially affect the original contract if the
11 aggregate amount of all such change orders or amendments
12 equal or exceed 25 percent of the aggregate price first
13 stated in the original contract.

14 (g) No exemption shall be approved on any contract
15 entered into on or after May 1, 1987, except, that if
16 construction services have been performed and paid, or
17 payable, prior to July 1, 1987, such construction service
18 shall not be subject to tax, provided that it can be
19 separately stated and identified from the construction
20 services performed on or after July 1, 1987.

21 (6)(a) No tax shall apply to the construction services
22 used in the construction or repair of roads pursuant to or
23 in furtherance of a contract with a governmental entity
24 described in s. 212.08(6). For the purpose of this
25 paragraph the term "road" as defined in s. 334.03(17), F.S.,
26 shall apply. The term "road" shall not include parking
27 lots, airport landing areas, nor helicopter pads.

28 (b)1. No tax shall apply to the construction services
29 used in the construction or repair or property used
30 primarily for public worship.

31 2. For the purpose of this exemption the contractor
32 must obtain from the public worship organization or
33 institution a statement that the property will qualify for
34 an exemption and a copy of their Consumer Certificate of
35 Exemption issued pursuant to s. 218.08(7).

1 (c) No tax shall be imposed upon construction services
2 or construction support services performed by one's own
3 employees if the services are performed for an employer who
4 is incidentally engaged in improving real property and such
5 improvements are made in the furtherance of the employer's
6 primary business, and the employer is not in the business of
7 providing construction services.

8 (7) For purposes of this rule, the following terms
9 shall mean:

10 (a) Contractor means a person who is engaged in the
11 repair, alteration, improvement or construction to realty
12 including but not limited to, persons engaged in building,
13 carpeting, electrical, masonry, plastering, plumbing,
14 heating, painting, ventilating, paperhanging, landscaping,
15 sheet metal, glass, roofing, bridge, concrete, road,
16 waterworks, pier or billboard work including subcontractors.
17 For purposes of this subsection, the term, "contractor"
18 includes both those who perform non-public works contracts
19 and those who perform public works contracts.

20 (b) "Prime contractor" means:

21 1. A person who enters into a contract to construct,
22 improve, alter, or repair realty with the person for whose
23 benefit the realty is being constructed, improved, altered,
24 or repaired;

25 2. A person who enters into a contract to undertake
26 the primary responsibility for supervising the construction,
27 improvement, alteration or repair of realty with the person
28 for whose benefit the realty is being constructed, improved,
29 altered, or repaired, in which case, all other persons
30 involved in the construction who would otherwise qualify as
31 prime contractors under subparagraph 1. shall be deemed
32 subcontractors;

33 3. A person who undertakes, on a speculative basis or
34 for his own use, the construction, improvement or alteration
35 of realty; or

1 4. If the owner of the realty or the person for whose
2 benefit the realty is being improved makes the improvements
3 without contracting the work out, that person shall be
4 deemed to be the "prime contractor".

5 5. A person who manufactures factory-built buildings.

6 (c) "Subcontractor" means a person who enters into a
7 contract to provide construction services to a prime
8 contractor or to another subcontractor.

9 (d) "Construction services" means any activity directly
10 involving the construction, alteration, improvement or
11 repair of realty.

12 (e) "Construction support services" means
13 architectural, engineering, drafting, surveying, land
14 planning, landscape design and interior design services when
15 such services directly relate to the construction,
16 alteration, improvement or repair of realty.

17 (f) "New construction" means factory-built buildings
18 and any construction, alteration, improvement or repair of
19 realty for which the contract price or cost price, including
20 building materials used, exceeds \$5,000.

21 (g) "Building materials" means tangible personal
22 property physically incorporated into the affected realty.

23 (h) "Improvements to real property", for the purpose of
24 this rule, means those improvements which are affixed to
25 and/or incorporated into the realty in such a manner that
26 the improvements become a part of the realty.

27 (i) "Contract price" means:

28 1. the total consideration paid pursuant to a contract
29 for the construction, alteration, improvement or repair of
30 realty, or in the case of new construction undertaken on a
31 speculative basis, the total consideration paid pursuant to
32 a contract to purchase the improved realty.

33 2. However, the contract price shall not include:

34 a. the fair market value of land and any improvements
35 to the land existing prior to the contract for the
36

1 construction, alteration, improvement or repair of the
2 realty; or

3 b. the value of construction support services provided
4 by other than employees of the prime contractor.

5 (j)1. "Fair market value" means 120 percent of the
6 property's assessed value for ad valorem tax purposes, as
7 reflected by the most recent assessment roll for the county
8 prior to the new construction, unless the prime contractor
9 can demonstrate to the satisfaction of the department by
10 proof of comparable sales, actual purchase price, or
11 appraisal, that such assessment understates the value of the
12 property.

13 2. If an appraisal is used, the appraisal must be done
14 by an independent appraiser.

15 (k) "Cost price" means, notwithstanding other
16 provisions of Chapter 212, the direct and indirect costs of
17 construction, including but not limited to, the cost of
18 materials used, labor and service costs, interest charged,
19 and overhead expenses, without any deduction whatsoever.

20 ~~(b) "Prime contractor" means a person entering into a~~
21 ~~contract for the improvement of realty with the person for~~
22 ~~whose benefit the realty is being improved, and means any~~
23 ~~person who manufactures factory-built buildings. When new~~
24 ~~construction is undertaken on speculation or for one's own~~
25 ~~use, the person responsible for the undertaking shall be~~
26 ~~considered the prime contractor. For the purpose of this~~
27 ~~rule any time a contractor enters into a contract with the~~
28 ~~owner of the realty or with the person for whose benefit the~~
29 ~~realty is being improved, such contractor shall be deemed to~~
30 ~~be a "prime contractor". If the owner of the realty or the~~
31 ~~person for whose benefit the realty is being improved makes~~
32 ~~the improvements without contracting the work out, that~~
33 ~~person shall be deemed to be the "prime contractor".~~

34 ~~(c) "Subcontractor" means a person entering into a~~
35 ~~contract for the improvement of realty with a prime~~
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1 ~~contractor or with another subcontractor.~~

2 ~~(d) "New construction" means factory-built buildings~~
3 ~~and any improvement to realty, but does not include any~~
4 ~~addition repair or further improvement to existing~~
5 ~~improvements to realty unless a building permit is required~~
6 ~~for such addition repair or further improvements.~~

7 ~~(e) "Building materials" means tangible personal~~
8 ~~property physically incorporated into improvements to realty~~
9 ~~whether through new construction or addition or repair.~~

10 ~~(f) "Improvements to real property", for the purpose of~~
11 ~~this rule, means those improvements which are affixed to~~
12 ~~and/or incorporated into the realty in such a manner that~~
13 ~~the improvements become a part of the realty.~~

14 ~~(g) "Construction services" means activity involving~~
15 ~~the physical fabrication, physical modification, or physical~~
16 ~~repair of improvements to realty and engineering,~~
17 ~~architectural, surveying services enumerated in SIC Industry~~
18 ~~Number 8911, land planning services enumerated in SIC~~
19 ~~Industry Number 7992, and drafting and interior design~~
20 ~~services enumerated in SIC Industry Number 7999, when such~~
21 ~~services directly relate to improvements to realty. The~~
22 ~~term also includes those activities usually provided for a~~
23 ~~consideration and referred to by Major Groups 15, 16 and 17~~
24 ~~of the SIC Manual.~~

25 (8) The applicability of the tax to contractors is as
26 follows:

27 (a)1. A contractor, acting as a subcontractor only, is
28 not required to register as a dealer, unless;

29 a. the subcontractor is an out-of-state
30 subcontractor;

31 b. the subcontractor purchases items of tangible
32 personal property from an out-of-state vendor who does not
33 charge Florida Sales tax; or

34 c. the subcontractor manufactures items of
35 tangible personal property for his own use in fulfilling his
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contract.

d. If either is the case, the subcontractor is required to register with the Department of Revenue as a dealer for the purpose of accruing and remitting tax on items of tangible personal property purchased or manufactured.

2. A subcontractor is not required to accrue, charge or collect tax on his services. However, the subcontractor is considered the final consumer of tangible personal property he uses in fulfilling his contract.

(b) The method by which the prime contractor arrives at the total amount of tax due for the repairs, alterations, improvements and construction of real property or for combination of work on both real and personal property will depend on whether or not the improvements are for new construction or for construction that is other than new construction.

~~(c) The prime contractor's tax liability may originate from either or a combination of five sources, which are:~~

- ~~1. the purchase of building materials from vendors;~~
- ~~2. the manufacture, production, compounding, processing fabrication or importation of building materials by the prime contractor;~~
- ~~3. payments made to subcontractors;~~
- ~~4. work (service) the prime contractor performs for himself, or~~
- ~~5. the amount charged to the principal for any construction services, other than new construction. (For further explanation, see subsection (11) below.)~~

(c~~d~~) The tax is due as follows:

1. on the purchase of building materials and construction support services from vendors or service providers the tax is due at the moment of the transaction. (see Rule 12A-1.054, F.A.C.).

1 2. on the manufacture or importation of building
2 materials by the prime contractor, the tax is due at the
3 moment the building materials are manufactured or imported
4 for use;

5 3. for new construction undertaken pursuant to a
6 contract, the tax shall be due when the prime contractor
7 receives payments under the contract. If the contract price
8 is paid in draw or installments, the amount of tax to be
9 paid with respect to each such draw or installment, before
10 application of the dealer credit, shall be that proportion
11 of the tax due on the total contract price which the amount
12 of the draw or installment bears to the total contract
13 price.

14 4. for new construction undertaken on a
15 speculative basis or for the prime contractor's own use,
16 when a subcontractor is involved, partial payment of the tax
17 shall be due at such time payment is made by the prime
18 contractor to the subcontractor based on 50 percent of the
19 amount of such payment. Any tax amounts remaining shall be
20 due 30 days after a certificate of occupancy is issued, or
21 if no certificate of occupancy is required, when the new
22 construction is first put to its intended use. (See
23 paragraph (12) for issuance of a Certificate of Occupancy.)

24 5. For new construction undertaken for the prime
25 contractor's own use, and no subcontractor is involved, the
26 tax shall be due when a certificate of occupancy is issued,
27 or if no certificate of occupancy is required when the new
28 construction is first put to its intended use. (See
29 paragraph (12) for issuance of a Certificate of Occupancy.)

30 ~~6. on payments made to subcontractors, the tax is~~
31 ~~due at the time payment is made.~~

32 ~~7. on work performed by the prime contractor for~~
33 ~~himself, the tax is due at the time his contract is~~
34 ~~fulfilled or within 30 days after the certificate of~~
35 ~~occupancy is issued, whichever is sooner. (See subsection~~
36

1 ~~(12) for Certification of Occupancy.)~~

2 65. ~~on charges~~ for construction service, other
3 than new construction, tax is due at the time the prime
4 contractor receives payment for the construction service
5 rendered. the ultimate owner of the realty is invoiced.

6 (d~~e~~) The tax is required to be remitted to the
7 Department of Revenue on the first day of the month
8 following the date the tax is due as indicated in paragraph
9 (c~~d~~) above and shall be delinquent on the twenty-first day
10 of each month; provided, however, if the 20th day falls on
11 Saturday, Sunday or a federal or state legal holiday,
12 returns shall be accepted as timely if postmarked or
13 delivered to the Department of Revenue on the next
14 succeeding day which is not a Saturday, Sunday or a legal
15 holiday.

16 (9) For new construction, the prime contractor is
17 considered the final consumer of such construction services
18 consumed in improving realty. The prime contractor is
19 required to register as a dealer and remit the amount of tax
20 due and payable on construction services as follows:

21 (a) For new construction undertaken pursuant to a
22 contract, or undertaken on a speculative basis but sold
23 within 6 months of completion of the new construction, the
24 tax shall be imposed upon 50 percent of the contract price.

25 (b) For new construction undertaken for the prime
26 contractor's own use, or undertaken on a speculative basis
27 and not sold within 6 months of completion, the tax shall be
28 based upon 50 percent of the cost price.

29 (c) For new construction consisting of factory-built
30 buildings, the tax shall be imposed upon the cost price,
31 less the amount paid for building materials incorporated
32 into such buildings.

33 (d) For new construction undertaken for the prime
34 contractor's own use or undertaken on a speculative basis,
35 and directly related to real property registered or exempt

1 pursuant to chapter 498 (Land Sale Practices), or regulated
2 under chapter 721 (Real Estate Time Share Plans), the tax
3 shall be imposed upon 50 percent of the cost price.

4 (e) If new construction is undertaken pursuant to a
5 contract that is not an arm's-length transaction, or if new
6 construction is undertaken on a speculative basis and the
7 realty is then sold within 6 months pursuant to a contract
8 that is not an arm's-length transaction, the tax shall be
9 imposed upon 50 percent of the cost price of the new
10 construction, and not upon the contract price. A contract
11 that is an arm's length transaction for purposes of this
12 paragraph is a transaction in which the greater of the
13 consideration actually paid or the aggregate price stated in
14 the contract is not less than the consideration that would
15 be paid for such goods or services by a willing buyer and a
16 willing seller, neither of which is under a compulsion to
17 buy or sell. If the aggregate price stated in the contract
18 is less than the cost price, than it shall be presumed that
19 the contract is not an arm's length transaction. If the
20 actual consideration paid is greater than either the cost
21 price or the contract price, then the contract price shall
22 be the actual consideration paid.

23 ~~(a) The tax shall be based on the total consideration~~
24 ~~paid to the subcontractor, less the subcontractor's cost of~~
25 ~~the building materials that were or will be incorporated~~
26 ~~into realty. This deduction may be made only if:~~

27 ~~1. the written proposal, contract, or interim or~~
28 ~~final invoice of the subcontractor specifically describes,~~
29 ~~itemizes and states the subcontractor's cost price of the~~
30 ~~building materials and the amount of tax paid on such~~
31 ~~building materials;~~

32 ~~2. the subcontractor provides a statement to the~~
33 ~~prime contractor that the above described and itemized~~
34 ~~building materials were or will be incorporated into realty~~
35 ~~for the specific contract in question, and~~

1 3. ~~the statement must be dated and signed by the~~
2 ~~subcontractor, or representative authorized to sign for~~
3 ~~him.~~

4 4. ~~the prime contractor should keep this~~
5 ~~statement in his files to support his credit on the cost of~~
6 ~~his subcontractor's building materials.~~

7 (b) ~~the prime contractor cannot take a deduction on~~
8 ~~tangible personal property that is or will not be~~
9 ~~incorporated into the realty, i.e., form materials,~~
10 ~~scaffolding, building jacks, temporary water connections,~~
11 ~~etc.~~

12 (c) ~~The tax also shall be based upon the cost price to~~
13 ~~the prime contractor of the services he provides.~~

14 (10) Elements of cost price will include those costs
15 that directly or indirectly benefit or are incurred because
16 of the construction, including but not limited to the
17 following items, notwithstanding tax being paid;
18 ~~unless noted otherwise.~~

19 Ad valorem taxes;

20 Building materials; (including except building material
21 manufactured, imported or purchased by the prime contractor
22 ~~and amounts paid to the subcontractor~~ upon which a sales tax
23 has been paid)

24 Building repair and maintenance;

25 Depreciation on fixed assets;

26 Direct labor;

27 Electricity;

28 Freight;

29 Fringe benefits;

30 Interest expense;

31 Indirect labor;

32 Indirect materials (not charged out as a direct building
33 material item);

34 Indirect Cost including but not limited to promotional
35 and selling expense;

1 Insurance expense (fire, liability, etc.);
2 Office supplies, forms, etc.
3 Overhead expenses attributable to the construction
4 cost;
5 Payroll taxes;
6 Rent
7 Sick pay;
8 Vacation pay;
9 Warehousing;
10 Waste disposal; or

11 ~~Any other element of cost, if such elements are~~
12 ~~reflected in the prime contractor's books and records as a~~
13 ~~component of the cost price of the construction services.~~

14 (11d) The tax on the sale of construction services for
15 other than new construction, shall be based on the total
16 charge to the owner of the affected real property, less any
17 amount consideration paid by the prime contractor for
18 building materials that were or will be incorporated into
19 the realty to subcontractors with respect to the project in
20 question. However, the deduction for building materials
21 shall only apply if the prime contractor has previously paid
22 the sales tax on such materials, and the written contract or
23 invoice provided by the prime contractor to the person for
24 whom the construction was done specifically itemizes the
25 building materials and the price paid by the prime
26 contractor for such materials.

27 ~~The prime contractor is required to accrue and remit tax~~
28 ~~based on the total consideration paid to the subcontractor,~~
29 ~~less a deduction for the the subcontractor's cost of the~~
30 ~~building materials that were or will be incorporated into~~
31 ~~the realty. This deduction may be made only if:~~

32 ~~a. the written proposal, contract, or interim or final~~
33 ~~invoice of the subcontractor specifically describes,~~
34 ~~itemizes and states the price of the building materials.~~

35 ~~b. the subcontractor provides a statement to the prime~~
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1 ~~contractor that the above described and itemized building~~
2 ~~materials are for the specific contract in question, and~~
3 ~~c. the statement must be dated and signed by the~~
4 ~~subcontractor, or his representative authorized to sign for~~
5 ~~him.~~

6 ~~2. However, if the contract between the owner of the~~
7 ~~affected real estate and the prime contractor specifically~~
8 ~~describes and itemizes the building materials purchased by~~
9 ~~the prime contractor and incorporated into the realty in~~
10 ~~fulfillment of the prime contractor's responsibilities under~~
11 ~~the contract, the tax shall be based on the taxable~~
12 ~~consideration, further reduced by the price of the prime~~
13 ~~contractor's said building materials on which tax has been~~
14 ~~paid.~~

15 (12+) No unit of local government shall issue a
16 certificate of occupancy for new construction until the
17 prime contractor submits Form DR-100, dated July, 1987,
18 which is hereby incorporated in this rule and made part of
19 the rule by reference, to the local government and certifies
20 thereon that the new construction is substantially complete.
21 Such form shall be provided to local governments by the
22 Department of Revenue, and the completed forms shall be
23 returned on the last business day of each month to the
24 Department of Revenue by the local governments.

25 (132)(a) Contractors who operate fabricating or
26 manufacturing plants which make items of tangible personal
27 property for their own consumption and use in the
28 performance of contracts for the construction or improvement
29 of real property are subject to tax upon the fabricated or
30 manufactured cost of such items.

31 (b) The tax is based upon the cost price of the product
32 manufactured, produced, compounded, processed or fabricated.
33 Elements of the cost price include those costs that directly
34 benefit or are incurred because of the manufacturing,
35 producing, compounding, processing or fabricating

1 ~~construction~~, including but not limited to the following
2 items, notwithstanding tax being paid;⁷

3 ~~unless noted otherwise:~~

- 4 Ad valorem taxes;
- 5 Building repair and maintenance;
- 6 Depreciation on Fixed Assets;
- 7 Direct labor;
- 8 Electricity;
- 9 Freight in;
- 10 Fringe benefits;
- 11 Indirect labor;
- 12 Indirect materials (not charged out as a direct
13 material);
- 14 Insurance expense (fire, liability, etc.);
- 15 Office supplies, forms, etc.
- 16 Overhead expenses attributable to the manufacture;
- 17 Payroll taxes;
- 18 Raw materials; ~~(except where tax has been paid on same)~~
- 19 Rent;
- 20 Sick pay;
- 21 Vacation pay;
- 22 Warehousing raw materials or materials in progress;
- 23 Waste disposal; or
- 24 Any other element of cost.

25 ~~if such element is reflected~~
26 ~~in the prime contractor's books and records as a component~~
27 ~~of the manufactured cost.~~

28 (149)(a) When a contractor secures the rock, shell,
29 fill dirt and similar materials he uses in construction work
30 from a quarry, pit or other location he owns or leases, he
31 is the ultimate consumer of such materials and is liable for
32 use tax thereon. The basis upon which the contractor shall
33 remit the tax is the fair retail market value determined by
34 establishing either the price he would have to pay for it on
35 the open market or the price he would regularly charge if he

1 sold it to other contractors or users.

2 (b) When a contractor does not own or lease the land
3 but has entered into an agreement to purchase fill dirt,
4 rock, shell or similar materials for his own use, and
5 wherein the contractor will excavate and remove the
6 material, the taxable basis shall include the cost of the
7 material plus all costs of clearing, excavating and
8 removing, including labor and all other costs incurred by
9 the contractor.

10 (~~154~~) In lieu of the method described in paragraph
11 (11)(a) above, for determining the taxable basis on rock,
12 shell, fill dirt and similar materials a contractor uses in
13 construction work, the Department of Revenue will accept as
14 the taxable basis the land cost plus all costs of clearing,
15 excavating and loading, including labor, power, blasting,
16 etc.

17 (~~165~~) No tax is applicable when the Department of
18 Transportation furnishes without charge the borrow materials
19 or the pits where materials are to be extracted for use on a
20 road contract.

21 (~~170~~) Borrow materials purchased on a cubic yard basis
22 are taxable.

23 (~~187~~) Roofing contractors who operate tile plants and
24 manufacture tile exclusively for their own consumption and
25 use in the performance of roofing contracts are subject to
26 tax upon the manufactured cost of such items (See subsection
27 (~~132~~)).

28 (~~190~~)(a) Chapter 87 6, Laws of Florida, imposes a tax
29 on the full fabricated cost of property being imported into
30 the state, and requires all instate dealers to pay tax on
31 the completed fabricated cost on all similar property.

32 (b) Sheet metal workers in Florida are required to pay
33 tax on the total fabricated or manufactured cost of the
34 finished product used by them in the performance of
35 contracts for the improvement of realty (See subsection
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1 (13~~2~~)).

2 (20~~19~~) Roadside billboards and bulletins erected on the
3 site where they are to be permanently located and which rest
4 on foundations or have their own supports anchored into the
5 ground in a permanent manner are considered as improvements
6 to real property.

7 (21~~0~~) Large signs fabricated at the job site or partially
8 fabricated in the sign shop and affixed to a building in a
9 permanent manner are considered as improvements to real
10 property and are taxable. This includes signs wherein
11 framework is erected on top of a building to which is
12 affixed individual wood, metal, neon or similar type letters
13 and/or panels, with necessary illumination, in such a manner
14 as to compose a sign. Also included are signs consisting of
15 individual letters attached to the side of a building in a
16 permanent fashion and in such a manner as to constitute a
17 sign. This type often has background letters painted on the
18 building and neon tubing behind and on the face of the
19 letters. A dealer who constructs such signs for others ~~on a~~
20 ~~lump sum basis~~ or who uses them in his own advertising
21 business is the ultimate consumer of materials and supplies
22 used in the construction thereof and shall pay tax on their
23 manufactured cost (See subsection (13~~2~~)).

24 (22~~1~~) Signs or lettering on walls, floors, doors and
25 windows of buildings are improvements to real property, and
26 dealers who do this type work are the ultimate consumers of
27 materials and supplies so used and shall pay tax on the cost
28 thereof.

29 (23~~2~~) The charge made by a sign company for
30 advertisements appearing on any of the type signs referred
31 to in paragraphs (20~~17~~), (21~~0~~) and (22~~19~~) is taxable.

32 (24~~3~~) Signs fabricated prior to reaching the job site,
33 which do not become part of realty, are tangible personal
34 property and are fully taxable. The sale or rental of such
35 signs and the installation charges therefor, are fully
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1 taxable as a sale or rental of tangible personal property.

2 (254) All other types of signs, whether hand painted,
3 printed or electric, are tangible personal property and are
4 taxable at their selling price. Installation charges are
5 taxable.

6 (265) A contract set up as a lease agreement providing
7 for the furnishing and installation of a security system or
8 a fire sprinkler system whereby the property is designated
9 as tangible personal property during the life of the lease,
10 and at the moment of expiration of such lease the security
11 system or the automatic sprinkler system becomes realty and
12 the title thereto is automatically vested in the lessee, is
13 considered a contract to improve real property. Such
14 contractors should pay tax on all materials used in the
15 construction of such systems. However, if a security system
16 or a sprinkler system is installed under the terms of a
17 lease agreement whereby it remains tangible personal
18 property, the lessor should purchase the materials used in
19 construction of the system without payment of tax and should
20 collect tax on the rental charges.

21 (276) An awning which is sold and attached to realty by
22 the seller loses its identity as tangible personal
23 property.

24 (287) A prime contractor is the ultimate consumer of the
25 materials he used in the construction of roads, sidewalks,
26 driveways, parking lots, bridges, docks, seawalls and
27 similar installations.

28 (296) Contractors who prefabricate seawall slabs,
29 T-piling and tiebacks for use in the construction of
30 seawalls, docks and bridges are taxable upon the full
31 fabricated cost of such materials.

32 (3029) The sale of fill dirt is fully taxable, including
33 delivery charges when delivery is made by the seller.

34 (a) When a contractor pursuant to a contract to
35 deepen channels or harbors hydraulically pumps the dirt on
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1 to spoil areas he is not deemed to be selling fill dirt;
2 charge is for moving the material from one location to
3 another and is taxable.

4 (b) When a contractor enters into a contract to fill
5 using materials, removed from state owned submerged land,
6 the taxable basis will be the cost of materials, fuel,
7 blasting, labor or other costs incurred by the contractor.

8 (31~~0~~) Contractors who install ice machines which are
9 attached to and become a part of realty should pay tax to
10 their vendors on the purchases of such machines.

11 (32~~+~~) A contractor may sell his equipment or materials
12 tax exempt as an occasional or isolated sale only when he is
13 not engaged in the business of selling tangible personal
14 property of a similar type. The rental of such equipment or
15 materials by the contractor is fully taxable.

16 (33~~2~~) A contractor or subcontractor is construed to be
17 improving real property when he furnishes and installs
18 wall to wall carpeting ~~pursuant to a lump sum, cost plus,~~
19 ~~fixed fee, or guaranteed price contract~~ when:

20 (a) There is no retained title provision in the
21 agreement;

22 (b) The carpeting is placed over unfinished or
23 unserviceable flooring; and

24 (c) The carpeting is affixed to the floor by nails,
25 glue or in some other manner and becomes the finished
26 floor.

27 (Refer to Rule 12A-1.016(4) for the sale of carpeting
28 which remains tangible personal property.)

29 (34~~9~~) A contractor or subcontractor is construed to be
30 improving real property when he furnishes and installs
31 mirrors ~~pursuant to a lump sum, cost plus, fixed fee, or~~
32 ~~guaranteed price contract~~ when:

33 (a) There is no retained title provision in the
34 agreement;

35 (b) The mirror is affixed to the building by nails,
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screws, glue, cement or in some other manner.

(Refer to Rule 12A-1.016(4) for sales of mirrors that do not become real property.)

(354) The charge made by a contractor for the furnishing, installation and subsequent removal of forms and related equipment used to hold and shape concrete on the job and for the construction of items such as floor slabs, joists, lintels, beams and columns is a charge for services confusing and is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections , Chapter 87 ,
Laws of Florida.
History New 7 1 87.

2 12-ER-87-32 Accounting Services. - Effective July 1,
3 1987, the sale or use in this state of accounting services
4 (described in paragraph (a)) for compensation are taxable.

5 (a) For purposes of this rule, accounting services
6 include accounting, auditing, bookkeeping, billing and
7 bookkeeping, payroll accounting, and preparation of tax
8 returns.

9 (b) Taxable accounting services may be performed by:

- 10 1. Certified public accountants; or
11 2. Public accountants, bookkeepers, or others who are
12 not required by the laws of this state to be licensed; or
13 3. Persons who perform such a service in violation of
14 licensing or other provisions of law.

15 (c) Data processing and tabulation services that are
16 not performed as a part of the services described in
17 paragraph (a), are taxable as business services, enumerated
by SIC Group Number 737.

19 (d) Compensation for an accounting service provided on
20 or after July 1, 1987, is considered to have been received
21 by the dealer when received, constructively or otherwise,
22 for Federal income tax purposes; but no amendment after
23 April 23, 1987 of Federal tax statutes or regulations can be
24 taken into consideration in determining when compensation
25 for an accounting service was received for purposes of the
26 tax on the sale or use of services.

27
28 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33 of
29 Chapter 87-6 Laws of Florida.

30 Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
31 Florida.

32 History - New 7-1-87.

12A-ER-87-33 **Membership Organizations.**

(1) Membership dues or membership fees paid to membership organizations are exempt from the tax on the sale or use of services, either as organizations enumerated in SIC Major Group 86, as non-profit arts, historical, or science organizations, or as regulatory athletic associations. (See Rule 12-ER-87-11(15).) This exemption is only applicable to dues or membership fees paid to organizations which are not for profit corporations under Chapter 617, F.S., or a comparable law of another state or are exempt organizations under the Internal Revenue Code. Seminar or convention registration dues or fees are also exempt, provided the membership organization meets the requirements stated above in this subparagraph and such dues or fees paid to the organization by its members are required for membership purposes.

~~(2) Membership dues and fees of other organizations, such as the following are taxable:~~

~~(2a) Membership sports and recreation clubs enumerated in (taxable as "amusement and recreation services" under SIC Major Group 79 are exempt as amusement and recreation services (see Rule 12-ER-87-11(41)).~~

1. Athletic clubs and gymnasiums;
2. Aviation clubs;
- ~~3. Baseball clubs - little league;~~
34. Membership bathing beaches;
45. Beach clubs;
56. Boating clubs;
67. Bridge clubs;
78. Sports and recreation clubs;
89. Country clubs;
910. Flying fields, maintained by aviation clubs;

- 1 10~~1~~. Golf clubs;
- 2 11~~2~~. Gun clubs;
- 3 12~~3~~. Hunting clubs: (but not hunting camps which are
- 4 taxable as transient transit rentals--See Rule 12A-1.061,
- 5 F.A.C.)
- 6 13~~4~~. Riding clubs;
- 7 14~~5~~. Shooting clubs;
- 8 15~~6~~. Swimming clubs;
- 9 16~~7~~. Tennis clubs;
- 10 17~~8~~. Yacht clubs.

11 18~~9~~. Concert or opera companies (~~unless exempt as~~

12 ~~not for profit "arts" organizations--See Rule~~

13 ~~12-ER-87-11(15)(b))~~.

14 (3~~b~~) News syndicates (taxable as "business services"

15 under SIC Code 73) are exempt.

16 (4~~3~~) Dues and fees of other organizations not

17 enumerated in SIC Major Group 86 are either exempt or beyond

18 the scope of the tax on sale or use of services, as

19 follows:

20 (a) Hospitals, operated by membership organizations

21 (exempt as "health services" under SIC Major Group 80);

22 (b) Fraternity and sorority houses (outside the scope

23 of the tax as "lodging places" listed in SIC Major Group

24 70);

25 (c) Fraternal insurance activity (exempt as

26 "insurance"--See Rule 12-ER-87-11(11)).

27 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33 of

28 Chapter 87-6 Laws of Florida.

29 Law Implemented Sections 1, 3 and 7, of Chapter 87-6, Laws

30 of Florida.

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2 12-ER-87-34 **Transportation Services.**

3 (1)(a) Some transportation services are exempt from
4 the tax on the sale or use of services as provided in
5 subsections (4), (17), (18), ~~and (19)~~, (27), (31), (37), and
6 (47) of Rule 12-ER-87-11. However, those listed in
7 subsections (2), (3), ~~through (4)~~, and (6) of this rule fall
8 outside those exemptions, and are taxable.

9 (b) Where the seller contracts to deliver tangible
10 personal property under the terms that requires the goods be
11 shipped f.o.b. to a destination in Florida, the
12 transportation charges (freight) are taxable if the sale is
13 taxable. Where the transportation charges are billed by the
14 seller to the buyer but documentation is inadequate to
15 establish the point at which title passed to the buyer, such
16 charges shall be considered a part of the taxable selling
17 price. The tax applies to the above regardless of mode of
18 transportation. (See 12A-1.045, F.A.C.)

19 (2) The following local and suburban transit and
20 interurban highway passenger transportation services
21 enumerated in SIC Major Group 41 are taxable ~~including~~:

- 22 (a) Aerial tramways;
23 (b) Automobile rental, with drivers;
24 (c) Cog railways;
25 (d) Limousine rental, with drivers;
26 (e) Sightseeing buses;
27 (f) School buses;
28 (g) Bus charters; and
29 (h) Bus terminal operation.

30 (3) The following ~~w~~water transportation services
31 enumerated in SIC Major Group 44 are taxable ~~including~~:

32 (a) Transportation on rivers and canals (canal barge
33 operation; canal transportation; intracoastal
34 transportation, including transportation on the Atlantic and
35

1 Intracoastal Waterway; lake transportation; log rafting
2 and towing; river transportation; and transportation on bays
3 and sounds of the ocean);

4 (b) Ferries across rivers or within harbors (car
5 lighter ferries, intraport transportation, and railroad
6 ferries); ~~are taxable;~~

7 (c) Miscellaneous water transportation (airboats, swamp
8 buggy rides, excursion boats, sightseeing boats, and water
9 taxis); ~~are taxable;~~

10 (d) Canal operation and maintenance are taxable;

11 (e) Miscellaneous services (boat hiring or chartering,
12 boat livery, boat yard storage, boathouses, cargo salvaging
13 from distressed vessels, ship dismantling, marinas, renting
14 and operating marine basins, marine salvaging, marine
15 wrecking, salvaging from sunken craft, removing underwater
16 hazards, marine wrecking ships for scrap, oil spill cleanup,
17 survey and classification of ships and marine equipment, and
18 services associated with the operation of yacht basins); ~~are~~
19 ~~taxable.~~

20 (f) Transportation services described in paragraphs (a)
21 through (e) are exempt when related to transportation of
22 agricultural commodities, phosphate rock, potash,
23 nitrogenous fertilizers and phosphatic fertilizers, as
24 provided in 12-ER-87-11(4).

25 (4) The following transportation services relating to
26 all modes of transportation as enumerated in SIC Major Group
27 47, except when exempt, are taxable; ~~as indicated below.~~

28 ~~(a) Freight forwarding, except where exempt as relating~~
29 ~~to water transportation, as provided in paragraph (m) of~~
30 ~~12-ER-87-11(19);~~

31 ~~(b) Arrangement of transportation of freight and cargo,~~
32 ~~except where exempt as relating to water transportation, as~~
33 ~~provided in paragraph (n) of 12-ER-87-11(19);~~

34 (ac) Inspection and weighing services incidental to
35 transportation;

1 **(bd)** Packing and crating goods for shipping; and
2 **(ce)** Miscellaneous services incidental to
3 transportation (sleeping and dining car operations not
4 performed by railroads, rental of horse drawn carriages or
5 cabs, cleaning railroad ballast, freight car loading and
6 unloading, pipe line terminal facilities, and stockyards,
7 not primarily for fattening or selling livestock.

8 **(df)** Transportation services described in paragraphs
9 (a) through **(ch)** are exempt when related to transportation
10 of agricultural commodities, phosphate rock, potash,
11 nitrogenous fertilizers, and phosphatic fertilizers as
12 provided in 12-ER-87-11(4).

13 (5) If the provider of taxable transportation service
14 enumerated in subsections (2), (3), (4), and (6), is
15 involved only in intrastate movement, the charges will be
16 fully taxable. If the provider is involved in interstate or
17 international movement, the charges will be taxable based on
18 a proration established in subsection (6)(b).

19 (6) Air transportation services other than passenger
20 transportation services enumerated in SIC Major Group 45 are
21 taxable (except when exempt as provided in paragraph (e)),
22 ~~transportation of agricultural commodities, phosphate rock,~~
23 ~~potash, nitrogenous fertilizers, and phosphatic fertilizers,~~
24 ~~as provided in 12-ER-87-11(4))~~, including:

25 (a) Air transportation by carriers holding certificates
26 of public convenience and necessity under the Civil
27 Aeronautics Act, operating over fixed routes on fixed
28 schedules, engaged primarily in the transportation of cargo
29 or freight.

30 (b) Air transportation by carriers permitted to operate
31 without a showing of public convenience and necessity under
32 the Civil Aeronautics Act, including noncertificated
33 irregular and supplemental air carriers, and including
34 only:

- 35 1. Noncertificated air cargo carriers;

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1 imposition of the tax would not be unlawful under the United
2 States Constitution or an Act of the United States Congress
3 as provided in s. 212.0591, F.S.

4 1. If the point of origin of the interstate or
5 international transportation service is in this state then
6 the tax shall be computed upon one-half (½) of the charge
7 imposed by the carrier for the service. Similarly if the
8 point of termination of the service is in Florida then
9 one-half of the charge is subject to the tax. If both the
10 point of origin and the point of termination is in this
11 state then the total charge is subject to the tax.

12 a. For purposes of this subsection the term "point of
13 origin" shall mean the physical location at which the
14 Florida service provider begins the movement of the
15 property.

16 b. The term "point of termination" as used in this
17 subsection means the physical location at which the Florida
18 service provider's movement of the property ceases.

19 c. As used in this subsection the term "Florida
20 service provider" means a person who is providing
21 transportation services in this state without regard to the
22 commercial domicile of the service provider.

23 ~~1. In regard to interstate and international commerce,~~
24 ~~interstate and international commerce transportation~~
25 ~~services shall be considered sold or used in this state to~~
26 ~~the extent that the sales price or cost price of the service~~
27 ~~is apportioned to this state pursuant to subparagraph 2.~~
28 ~~below.~~

29 ~~2. The sales price of the sale of interstate or~~
30 ~~international transportation services, or the cost price of~~
31 ~~the use of interstate or international transportation~~
32 ~~services, shall be apportioned to the state as provided in~~
33 ~~this subparagraph. There shall be included in the measure~~
34 ~~of the tax imposed by this part on the sale or use of~~
35 ~~interstate or international transportation services, that~~

1 ~~proportion of the sales price or cost price of the Florida~~
2 ~~service provider which is equal to the proportion of mileage~~
3 ~~within Florida to the total United States mileage of the~~
4 ~~Florida service provider for the service transaction in~~
5 ~~question. For purposes of this subparagraph, "Florida~~
6 ~~service provider" means the person providing transportation~~
7 ~~services in Florida regardless of the commercial domicile of~~
8 ~~such person.~~

9 ~~a. Example. By The Pound Air Freight agrees to transport~~
10 ~~goods for XYZ Construction Company from Miami, Florida to~~
11 ~~Peru for use in a construction job in Peru. By The Pound~~
12 ~~Air Freight charges XYZ Construction Company \$500 for this~~
13 ~~service. The total air miles from Miami, Florida to Peru is~~
14 ~~1400, air miles from Miami, Florida to international air~~
15 ~~space is 10 miles. Based on this information, what will~~
16 ~~By The Pound Air Freight's proration factor be? How much~~
17 ~~tax is due on this transaction?~~

18
19 ~~Answer:~~

20 ~~Proration = $\frac{10 \text{ Miles Florida}}{10 \text{ Miles Total U.S. Mileage}} = 100\%$~~
21
22 ~~Tax Due = $\$500.00 \times 100\% = \500~~
23 ~~Tax Rate = $\frac{\$500}{\$500} = 1.00$~~
24 ~~Tax Due = $\$500 \times 1.00 = \500~~
25

26 ~~b. Example. By The Pound Air Freight agrees to transport~~
27 ~~goods for U.R. Tired Mattress Company from Miami, Florida to~~
28 ~~Houston, Texas for sale in a retail outlet in Houston. On~~
29 ~~the way to Houston By The Pound Air Freight stops in Mexico~~
30 ~~City to deliver other goods for XYZ Construction Company~~
31 ~~By The Pound charges U.R. Tired \$1500 for this service. The~~
32 ~~total air mileage is 4500.~~

33 ~~1. Air miles from Miami, Florida to international air~~
34 ~~space is 10 miles.~~

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~~2. Air miles from Miami, Florida to Mexico City is
2,500 miles.~~
~~3. Air miles from Mexico City to Texas is 2000 miles.~~
~~4. Air miles from international air space to Houston,
Texas is 57 miles.~~

Answer:

Proration ~~10 Miles Florida~~ = ~~14.9254%~~
~~67 Miles Total U.S. Mileage~~

Tax Due ~~\$1500.00 X 14.9254%~~ = ~~\$223.98~~
Tax Rate ~~X .05~~

(On Bracket) ~~11.20~~

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 2 and 7, Chapter 87-6, Laws of
Florida Section _____, Chapter 87-_____, Laws of Florida.
History - New 7-1-87.

2 12-ER-87-35 Sanitary Services.

3 (1) Sanitary services provided by private or
4 governmental units contained in SIC Group Number 495, such
5 as but not limited to sewerage systems, including hook-ups
6 and such treatment processes as may be provided, garbage,
7 operation of dumps, dead animal disposal, acid waste
8 collection and disposal, malaria control and mosquito
9 eradication and septic tank cleaning services enumerated in
10 SIC Industry Number 7699, are taxable when sold or provided
11 to organizations or facilities other than residential
12 households or owners of residential models. Sanitation
13 Services, Inc. contracts with a city to provide garbage
14 collection services to residential subdivisions of the city.
15 The charges from Sanitation Services, Inc., to the
16 individual households for its service of garbage collection
17 is exempt from taxation. However, if Sanitation Services,
18 Inc., contracts to dispose of such garbage at a landfill the
19 charge for the landfill's service is taxable as a separate
20 service transaction.

21 (2)(a) Local trucking sanitary services, including only
22 debris removal, carting only and garbage and refuse
23 collecting and transporting, without disposal, as enumerated
24 in SIC Industry Number 4212, is taxable when sold or
25 provided to organizations or facilities other than
26 residential households or owners of residential models.

27 (b) "Tipping Fees" or other charges allowing a person
28 or business to dispose of garbage, debris, or refuse are
29 taxable.

30 (3) The services outlined in subsections (1) and (2) of
31 this rule are subject to tax whether provided by a private
32 or governmental entity.

33 (4) Also, SIC Group Number 496 steam supply services
34 are taxable. These include but not limited to cooled air
35

1 suppliers, distribution of cooled air, steam heating systems
2 suppliers of heat, and steam supply systems including
3 geothermal.

4 (5) Establishments primarily engaged in operating
5 water supply service systems included in SIC Group Number
6 494 and for the purpose of irrigation systems services
7 included in SIC Group Number 497 are not subject to the tax.
8 These include but are not limited to impounding reservoirs,
9 irrigation, irrigation system operation and water
10 distribution or supply systems for irrigation.

11 (6) Residential households or owners of residential
12 models as stated in subparagraphs (1) and (2) above,
13 includes apartments, condominiums, and similar multi-family
14 dwellings unless 50 percent or more of the dwelling rentals
15 are entirely transient in nature, see s. 212.03, F.S. and
16 Rule 12A-1.061, F.A.C.

17 (7) With regard to sanitary services, if the service is
18 billed on or after July 1, 1987, the entire amount billed is
19 subject to the tax.

20 EXAMPLE: A monthly billing cycle covering the period June
21 15, to July 15, 1987 billed prior to July 1, is completely
22 exempt. A monthly billing cycle covering the period June 15
23 to July 15, 1987, billed on or after July 1 is fully taxable
24 based upon proration, i.e., the charge for services rendered
25 after June 30, 1987 is taxable at the rate of 5%, without
26 proration.

27 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
28 Chapter 87-6 Laws of Florida.
29 Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
30 Florida Section _____, Chapter 87-_____, Laws of Florida.
31 History - New 7-1-87.
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2 12-ER-87-36 **Wrecking Services.**

3 (1) Persons engaged in the business of wrecking,
4 tearing down, defacing or demolishing tangible personal or
5 real property or any parts thereof are performing or
6 providing a taxable service.

7
8 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
9 Chapter 87-6 Laws of Florida.

10 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
11 Florida.

12 History - New 7-1-87.

12-ER-87-37 **Turkish Baths, Massage and Reducing Salons.**

(1)(a) Persons engaged in the business of operating turkish baths, reducing salons or in the business of massaging are performing or providing a taxable service.

(b) "Turkish baths" shall mean any type of facility wherein the individual is warmed by steam or dry heat.

(c) "Reducing salons" shall mean any type of establishment which offers facilities or a program of activities for the purpose of weight reduction.

(d) "Massaging" shall include the kneading, rubbing or manipulating of the body to condition the body, but does not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts.

(2) Persons engaged in the business of operating health studios which, as a part of their operation, offer any or all of the services of turkish baths, massages or reducing facilities or programs shall be subject to tax upon the provision of the above named service.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

1 DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

2 12-ER-87-38 **Weighing Services.**

3 (1) Persons engaged in the business of weighing any
4 item of tangible personal property are performing or
5 providing a taxable service.

6 (2) However, weighing services connected with the
7 transportation of agriculture are exempt from taxation.
8 (See S.I.C. Major Group 47, specifically Group Number 478
9 and Industry Number 4782).

10
11 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
12 Chapter 87-6 Laws of Florida.
13 Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
14 Florida.

15 History - New 7-1-87.

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2 12-ER-87-39 Termite, Bug, Roach and Pest
3 Eradicators Services.

4 (1) Persons engaged in the business of eradicating or
5 preventing the infestation by termites, bugs, roaches and
6 all other living pests are performing or providing a taxable
7 service.

8
9 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
10 Chapter 87-6 Laws of Florida.

11 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
12 Florida.

13 History - New 7-1-87.
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2 12-ER-87-40 **Painting, Papering, Interior Designing, and**
3 **Interior Decorating Services.**

4 (1)(a) Persons engaged in the business of painting,
5 papering, interior designing, or interior decorating are
6 performing or providing a taxable service.

7 (b) "Painting" shall mean covering of both interior and
8 exterior surfaces of tangible personal or real property with
9 a coloring matter and mixture of a pigment or sealant, with
10 some suitable liquid to form a solid adherent when spread on
11 in thin coats for decoration, protection or preservation
12 purposes and all necessary preparations thereto, including
13 surface preparation.

14 (c) "Papering" shall mean applying wallpaper or wall
15 fabric to the interior of houses or buildings and all
16 necessary preparations thereto including surface
17 preparation.

18 (d) "Interior decoration" shall mean the service of
19 designing or decorating the interiors of houses or
20 buildings, counseling with respect to such designing or
21 decoration or the procurement of furniture, fixtures, or
22 home or building decorations.

23 (e) Interior designers or decorators involved in the
24 activity of painting or papering are considered to be making
25 improvements to real property, see Rule 12-ER-87-31.

26 (2) When any person provides interior decorating
27 service without charge as an incident to the sale of real or
28 personal property, no sales tax, in addition to that paid on
29 the purchase price or any part thereof of the personal
30 property, shall be charged.

31 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
32 Chapter 87-6 Laws of Florida.

33 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
34 Florida.

35 History - New 7-1-87.
36

2 12-ER-87-41 Debt Collecting Services.

3 (1) Persons engaged in the business of performing or
4 providing, for compensation, services for the collection of
5 delinquent accounts receivable, are performing or providing
6 a taxable service. The sale of a debt collection service
7 shall be considered a sale for resale only if it meets the
8 five (5) criteria contained in 12-ER-87-4.

9 Example: B collection agency collects from C's debtors in
10 the name of B. B retains a percentage for its services and
11 turns over the balance to C. The percentage retained by B
12 is subject to tax;

13 Example: B collection agency collects from C's debtors in
14 the name of B. B remits the total collected to C and
15 receives a percentage of the amount collected as a
16 collection fee from C on a monthly basis. The amount
17 received by B on a monthly basis is subject to tax.

18 Example: B sells his accounts receivable to C collection
19 agency for a percentage of the face amount of the accounts.
20 C collects from debtors in the collection agency's name and
21 retains all amounts obtained. Neither of these transactions
22 is subject to tax.

23
24 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
25 Chapter 87-6 Laws of Florida.

26 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
27 Florida.

28 History - New 7-1-87.
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2 12-ER-87-42 Promotional Services.

3 (1) The sale of promotional services is taxable.

4 Example: John Doe Trading Stamp Company sells a promotional
5 service to grocers in Florida. It provides stamps for
6 distribution to the grocery buyer who can redeem these
7 stamps for merchandise at redemption centers. Although the
8 grocer will generally pass on the cost of the stamps to the
9 customer through higher grocery prices, the promotional
10 service is used by the grocer and is therefore taxable.
11

12 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
13 Chapter 87 6 Laws of Florida.

14 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
15 Florida.

16 History - New 7-1-87.
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2 12-ER-87-43 Cooperative Merchandising or Advertising
3 Agreements.

4 (1)(a) Payments pursuant to cooperative merchandising
5 or advertising agreements regardless of the basis upon which
6 these amounts are determined constitute taxable
7 consideration for the performance of advertising and
8 promotional services.

9 (b) Cooperative agreements are sales promotion devices.
10 These agreements generally provide for payments that are not
11 discounts but contributions toward cost of merchandising and
12 allowances to defray promotional expenses. The agreements
13 are generally offered on the part of manufacturers and other
14 sellers to make payment to retailers for their services in
15 advertising and otherwise promoting the sales of
16 commodities. The amounts of payments for such services are
17 generally either determined on the basis of volume sales
18 within given periods or on the basis of specified
19 advertising rates such as national line rate for newspaper
20 advertisements and standard station rates for radio and
21 television advertisements.

22
23 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
24 Chapter 87-6 Laws of Florida.

25 Law Implemented Sections 3 and 7, Chapter 87-6, Laws of
26 Florida.

27 History - New 7-1-87.
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2 12-ER-87-44 Advertising Media.

3 The provisions of this rule implement the special
4 advertising provisions of the sales and use tax on services
5 set forth in s. 212.0595, F.S.

6 (1)(a) A tax at the rate of 5 percent of the sales
7 price or cost price of advertising is imposed on advertising
8 sold or used in this state. ~~Every person is exercising a~~
9 ~~taxable privilege who engages in the business of selling~~
10 ~~advertising in this state. For the exercise of such~~
11 ~~privilege, a tax is levied at the rate of 5 percent of the~~
12 ~~sales price of advertising sold in this state.~~

13 (b) The term "advertising" for purposes of this rule
14 means the service of conveying the advertiser's message, and
15 shall include any mark-up charged by an advertising agency
16 or any other person for the service of brokering the medium
17 (that is, the advertising service). However, the term
18 "advertising" shall not include creative services of a type
19 customarily performed by an advertising agency.

20 (c) Advertising is deemed to have been sold in Florida
21 if the greater proportion of the advertising is performed
22 within Florida based on costs of performance. "Costs of
23 performance" means direct costs determined in a manner
24 consistent with Generally Accepted Accounting Principles ~~is~~
25 in accordance with accepted conditions or practices in the
26 type advertising trade, or business, in which the
27 advertising provider is engaged. If advertising is sold in
28 Florida, the sales tax shall be collected and remitted by
29 the advertising media provider, unless the advertising is
30 purchased pursuant to a resale permit, in which case the
31 person reselling the advertising shall collect and remit the
32 tax. ~~subject to the provisions of subsection (11).~~

1 (d) Sale price of the sale of advertising sold in this
2 state means the total amount paid for the tangible personal
3 property or services of advertising, ~~including any services~~
4 ~~that are a part of the sale and any tangible personal~~
5 ~~property that is part of the service~~, valued in money,
6 whether paid in money or otherwise, and includes any amount
7 for which credit is given to the purchaser by the seller,
8 without any deduction therefrom on account of the cost of
9 the services property sold, the cost of material used, labor
10 ~~or service cost~~, interest charged, loses, or any other
11 expense whatsoever. ~~Trade-ins or Discounts~~ allowed to the
12 final consumer and taken at the time of sale shall not be
13 included when computing the sales price.

14 ~~(d) "Advertising" means advertising services and~~
15 ~~includes any activity the purpose of which is to convey an~~
16 ~~advertiser's message. "Advertising" does not include~~
17 ~~creative services of a type customarily performed by an~~
18 ~~advertising agency.~~

19 (2)(a) Except as otherwise provided, ~~e~~Every person who
20 has purchased advertising in other states, territories, the
21 District of Columbia, or any foreign country, and used or
22 consumed such advertising in this state, shall pay the tax
23 at the rate of 5 percent of the cost price, the same as if
24 such advertising had been sold at retail for use or
25 consumption in this state. "Cost price" means the actual
26 cost of advertising without any deductions whatsoever.

27 (b) The provisions of this subsection do not apply ~~in~~
28 ~~respect~~ to the use or consumption of advertising, or
29 distribution of advertising in this state, upon which a like
30 tax equal to or greater than 5 percent has been lawfully
31 imposed and paid in another state. However, if the amount
32 of tax paid in another state is not equal to or greater than
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1 5 percent, the person who purchases, uses, or consumes the
2 advertising shall pay to the department ~~the~~ an amount
3 sufficient to make the total tax paid ~~in another state and~~
4 ~~in Florida~~ equal to 5 percent.

5 (c) Advertising is deemed to have been used in this
6 state if it was sold outside this state for consumption in
7 Florida.

8 (d) Advertising is presumed to be sold for consumption
9 in Florida to the extent the sales price of the sale of
10 advertising, or the cost price of the use of advertising, is
11 apportioned to Florida.

12 (e) If advertising is not sold in Florida, but used or
13 consumed in Florida by a advertiser having tax nexus in
14 Florida, the person purchasing the advertising
15 shall self-accrue the use tax, based upon the apportionment
16 provisions contained herein, and remit the tax directly to
17 the department unless the advertising is sold for resale to
18 a person registered as a dealer with the Department, in
19 which case the registered dealer shall collect and remit the
20 tax when the advertising is resold.

21 (f) When advertising is sold or resold, the seller or
22 reseller shall state the sales price of the advertising and
23 the applicable apportionment factor, if any, separately from
24 any other charges which may be included in the invoice,
25 charge slip or other tangible evidence of sale.

26 (g) When the tax on advertising is not collected by the
27 seller of the advertising, it is the responsibility of the
28 purchaser to secure the apportionment factor pursuant to
29 subsection (6), (7), (8) and (9) from the advertising
30 media.

31 ~~When advertising is purchased and resold, the person~~
32 ~~reselling the advertising may deduct the consideration paid~~
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1 ~~for advertising from his charges for purposes of calculating~~
2 ~~the sales price of the sale of advertising, or the cost~~
3 ~~price of the use of advertising. The deduction shall not~~
4 ~~include taxes paid on the advertising nor any markup the~~
5 ~~reseller may have added to the advertising.~~

6 (3)(a) The sales and use tax on advertising shall be due
7 and payable according to the brackets set forth in s.
8 212.12, F.S. at the time of the sale or use of the service
9 unless the person required to remit the tax, elects to
10 ascertain the amount of tax payable on advertising on a cash
11 accounting basis. ~~at the time consideration is paid for~~
12 ~~such advertising and on the amount of the consideration~~
13 ~~paid.~~ If such election is made, it shall be applicable to
14 all taxable advertising transactions of such person.

15 (b) A person electing to ascertain the amount of tax
16 payable on advertising on a cash accounting basis ~~remit the~~
17 ~~tax on advertising at the time the consideration is paid for~~
18 ~~advertising and on the amount of consideration paid~~ shall
19 make his election request in writing setting out the trade
20 name of his business, mailing address, the dealer's
21 certificate of registration number assigned by the
22 Department and, the effective month of the election ~~and the~~
23 ~~reason the election is requested.~~ The request must be
24 addressed to the Department of Revenue, Carlton Building,
25 Tallahassee, Florida 32399-0100. All requests must be
26 received by the Department before the tax return for which
27 the election is made becomes delinquent. If such election
28 is made, it shall be applicable to all taxable advertising
29 transactions of such dealer for a minimum of 12 consecutive
30 months. Every person, electing to ascertain the amount
31 of tax payable on the basis of tax receipts shall renew such
32 election every five (5) years from the date of the initial

1 election. The department will review each election renewal
2 to ensure that the dealer is still primarily engaged in the
3 business of selling services.

4 (c) A person making an election to ascertain the amount
5 of tax payable on advertising on a cash accounting basis
6 ~~remit the tax on advertising at the time the consideration~~
7 ~~is paid~~ may change his election and remit the tax on an
8 accrual basis by a written request setting out the trade
9 name of the business, mailing address, the dealer's
10 certificate of registration number assigned by the
11 Department, and the effective month of the election change
12 ~~and the reason the election change is requested.~~ The
13 request must be addressed to the Department of Revenue,
14 Carlton Building, Tallahassee, Florida 32399-0100. All
15 requests must be received by the Department before the tax
16 return for which the change in election is made becomes
17 delinquent. If such election to change is made, it shall be
18 applicable to all taxable advertising transactions of such
19 dealer for a minimum of 12 consecutive months.

20 (d) The department may permit persons required to file
21 returns and pay tax due on a monthly basis to divide a year
22 into a different number of reporting periods, provided each
23 reporting period is less than 30 days. A dealer requesting
24 a deviation from monthly filing and remitting the tax due
25 must make a request in writing, setting out in detail the
26 problems, the beginning and ending day, month, and year of
27 each respective reporting period, the trade name of his
28 business, mailing address, and the dealer's certificate of
29 registration number assigned by the Department of Revenue.
30 If the department determines that the information required
31 for the making of an accurate return cannot reasonably be
32 compiled by a taxpayer on a calendar month basis, it will

1 notify the dealer in writing that the deviation from monthly
2 filing of returns and remitting of tax is authorized. Such
3 returns shall be due and payable on the first day succeeding
4 the end of the reporting period and shall be delinquent on
5 the twenty-first day succeeding the end of the reporting
6 period.

7 (4) The advertising media is not required to furnish
8 the Department a listing of advertisers ~~persons~~ placing
9 advertising with the advertising media.

10 (5) Consideration paid pursuant to written contracts
11 for a term in excess of 2 years, entered into prior to April
12 1, 1987, are exempt until the expiration of such contract.
13 election. The department will review each election renewal
14 to ensure that the dealer is still primarily engaged in the
15 business of selling services.

16 However, the consideration paid pursuant to any extension or
17 renewal of such contract is taxable.

18 (6) Calculation of the tax on advertising services
19 rendered by broadcast media:

20 (a) The applicable tax rate shall be applied to an
21 apportioned share of the entire sales or cost price of the
22 advertising services rendered by any television broadcaster,
23 or AM, FM or other commercial radio broadcaster, whether its
24 signals are transmitted over the air, by cable or otherwise.
25 The apportioned share shall be calculated by multiplying the
26 entire sales or cost price by a proportion equal to the
27 broadcaster's market coverage in Florida divided by its total
28 market coverage in the United States.

29 (b)1. For a broadcaster whose signal is not primarily
30 carried by cable, market coverage shall be measured by the
31 number of U.S. households in its signal reception area.

1 2. The number of households shall be based upon
2 household counts for county areas (or equivalent political
3 jurisdictions, such as parishes in the State of Louisiana)
4 published by the Bureau of the Census of the United States
5 Department of Commerce as derived from its most recent
6 decennial population census.

7 3. Signal reception area for television broadcasters
8 whose signal is not primarily carried by cable shall be that
9 geographic region included in the most recent predicted
10 Grade "BA" ~~predicted~~ coverage contour filed by the
11 broadcaster with the Federal Communications Commission.

12 4. Signal reception area for low power television
13 broadcast stations whose signal is not primarily carried by
14 cable shall be the signal strength contour areas filed with
15 the Federal Communications Commission as follows:

16 a. channels 2-6 shall be the 62db above 1 microvolts
17 per meter contour area;

18 b. channels 7-13 shall be the 68db above 1 microvolts
19 per meter contour area; and

20 c. channels 14-69 shall be the 74db above 1 microvolts
21 per meter contour area.

22 5. Signal reception area for FM radio broadcast
23 stations whose signal is not carried by cable shall be the
24 70db above 1 microvolts per meter signal contour area filed
25 by the FM broadcaster with the Federal Communications
26 Commission.

27 6. Signal reception area for Class I (A and B) AM
28 broadcast stations shall be the 100 microvolts per meter
29 signal strength contour area filed by the AM broadcaster
30 with the Federal Communications Commission. For all other
31 Classes of AM broadcast stations the signal reception area
32 shall be the 500 microvolts per meter signal strength

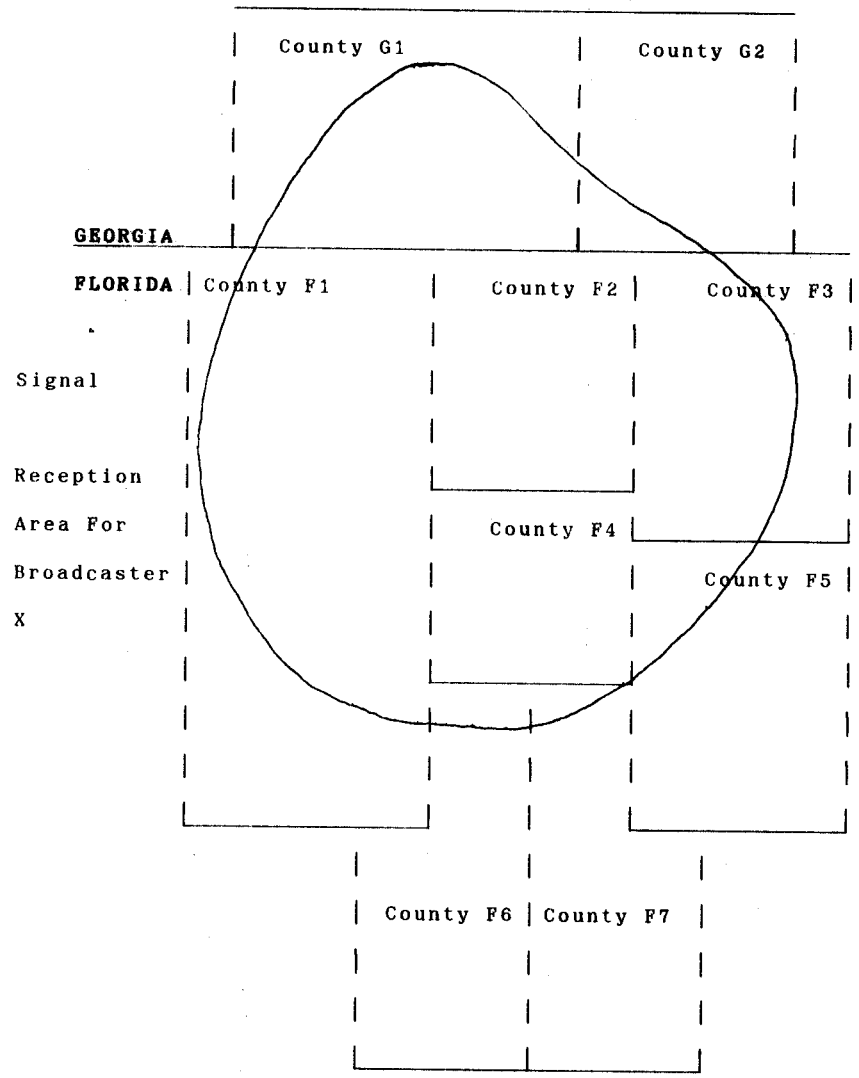
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contour area filed by the AM broadcaster with the Federal
Communications Commission.

~~4. Signal reception area for radio broadcasters whose
signal is not primarily carried by cable shall be that
geographic region included in the most recent predicted
maximum groundwave contour signal data filed by the
broadcaster with the Federal Communications Commission.~~

75. If the signal reception area of a broadcaster whose
signal is not primarily carried by cable includes more than
half of the geographic area of a county ~~or if it includes
more than half the geographic area of a Standard
Metropolitan Statistical Area (SMSA) within the county,~~ then
the entire number of households in the county shall be
considered within the signal reception area. Otherwise,
none of the households in the county shall be considered
within the signal reception area.

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<u>County</u>	<u>Household Counts</u>
G1	1,500
G2	1,500
F1	2,000
F2	1,000
F3	2,000
F4	500
F5	1,000
F6	1,500
F7	1,000

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Broadcaster X's signal reception area includes over half the geographic area of the following counties:

<u>County</u>	<u>Households</u>
G1	1,500
F1	2,000
F2	1,000
<u>F3</u>	<u>2,000</u>
F4	<u>500</u>
Total	<u>75,000</u>

In addition, Broadcaster X's signal reception includes over half the Standard Metropolitan Statistical Areas in County F1 (already included above) and County F3.

Therefore, the total U.S. market coverage for broadcaster is the above ~~total (5,000) plus the population of county F3 (2,000)~~ for a grand total of 7,000.

The apportionment factor for Broadcaster X is calculated as:

Florida Households within Signal Reception Area

Total U.S. Households within Signal Reception Area =

Households in Counties F1, F2, F3 and F4 =

Households in Counties G1, F1, F2, F3 and F4

$$\frac{5,500}{7,000} = .7857 \text{ or } 78.57\%$$

Therefore, for an advertisement sold by Broadcaster X for \$100.00, the amount subject to Florida's sales and use tax is \$78.57.

1 (c)1. For a broadcaster whose signal is primarily
2 carried by cable, market coverage shall be measured by the
3 number of subscribers receiving the broadcasters signal by
4 cable. Each household receiving the cable signal shall be
5 considered a single subscriber. The geographic location of
6 the subscriber shall be determined by his service address.

7 2. For cable television systems each separate and
8 distinct community or municipal entity (including
9 unincorporated communities within unincorporated areas and
10 single, discrete unincorporated areas) served by cable
11 television facilities constitutes a separate cable
12 television system, even if there is a single headend and
13 identical ownership of facilities extending into several
14 communities. The term "cable television systems", for the
15 purpose of this rule, shall have the same meaning as the
16 term "cable television system" as defined by the Federal
17 Communications Commission (s. 76.5(a) Code of Federal
18 Regulation, revised as of October 1, 1985) and means "a
19 facility consisting of a set of closed transmission paths
20 and associated signal generation, reception, and control
21 equipment that is designed to provide cable service which
22 includes video programming and which is provided to multiple
23 subscribers within a community, but such term does not
24 include (1) a facility that services only to retransmit the
25 television signals of one or more television broadcast
26 stations; (2) a facility that serves only subscribers in one
27 or more multiple unit dwellings under common ownership,
28 control or management, unless such facility or facilities
29 uses any public right-of-way; (3) a facility of a common
30 carrier which is subject in whole or part, to the provisions
31 of Title II of the Communications Act of 1934, as amended,
32 except that such facility shall be considered a cable system
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to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems."

3. The subscriber count for cable systems shall mean the latest subscriber figures furnished by the operator of the cable system to the FCC or copyright computed on the FCC formula wherein (1) the total indicated dwelling subscribers are added to (2) total revenues from bulk-rate subscribers (such as motels) divided by rate of indicated dwelling units.

EXAMPLE: Broadcaster Y is a broadcaster whose signal is primarily carried by cable. It is carried by two cable systems operating in Florida and Georgia. Broadcaster Y's signal is available to any subscriber on either cable system so that all subscribers are receiving subscribers.

	Subscribers <u>in Florida</u>	Subscribers <u>in Georgia</u>
Cable System 1	10,000	2,000
Cable System 2	<u>5,000</u>	<u>3,000</u>
Totals	15,000	5,000

Broadcaster Y's apportionment factor is calculated as:

$$\frac{\text{Florida Subscribers}}{\text{Total U.S. Subscribers}} = \frac{15,000}{15,000 + 5,000} = .7500$$

or
75.00%

Therefore, for an advertisement sold by broadcaster Y for \$100.00, the amount subject to Florida's sale and use tax is \$75.00.

1 (d)1. A television broadcaster shall be considered one
2 whose signal is primarily carried by cable if its total
3 number of receiving subscribers in the United States is at
4 least twice the number of U.S. households in its signal
5 reception area, measured as prescribed in paragraphs (b) and
6 (c).

7 2. A cablecaster ~~television broadcaster~~ with no
8 over-the-air television broadcast signal shall be considered
9 one whose signal is primarily carried by cable.

10 3. No radio broadcaster shall be considered one whose
11 signal is primarily carried by cable unless the broadcaster
12 demonstrates otherwise to the satisfaction of the
13 department.

14 (e) All apportionment factors and broadcaster signal
15 status determinations shall be made annually immediately
16 prior to the start of the broadcasters fiscal year and shall
17 utilize the most recent available data. However, if the
18 broadcaster's signal reception area, or the number of cable
19 systems upon which the broadcaster's signal is carried,
20 changes within the fiscal year, his apportionment factor and
21 signal status shall be redetermined.

22 (f) In the case of networks of broadcasters, the
23 applicable apportionment factor and signal status shall be
24 determined by aggregating the relevant data for each
25 affiliate which carries the advertising message.

26 (7) Calculation of the tax on advertising services
27 rendered by print media with a paid circulation:

28 (a) The tax rate shall be applied to an apportioned
29 share of the entire sales or cost price of the advertising
30 service rendered by any newspaper, magazine, periodical or
31 similar printed advertising media with a paid circulation.
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The apportioned share shall be calculated by multiplying the entire sales or cost price by a proportion equal to the print media's market coverage in Florida divided by its total market coverage, in the United States. The proportion shall be rounded to 4 decimal places.

(b) The term "market coverage", in the case of print media means average circulation within the geographic area of distribution of the publication in which the advertisement appears.

(c) Market coverage shall be measured by the number of copies of the edition which carries the advertisement in paid circulation of the publication as determined by an independent audit agency using accepted measurement standards for the industry. A given publication shall be considered to consist of multiple editions to the extent that advertisements are intended by the publisher to reach different geographical areas.

(d) The apportionment factor for each edition shall be determined annually immediately prior to the start of the publisher's fiscal year and shall utilize the most recent available data. If the publication did not exist in the prior year, apportionment shall be based on population within the counties in which the publication will be distributed, or such other measurement as may reasonably reflect circulation, subject to approval by the department.

EXAMPLE: Magazine Z has a national edition, a southeastern U.S. edition and a Miami edition.

Circulation is as follows:

	Florida	U.S.
	<u>Circulation</u>	<u>Circulation</u>
National Edition	15,000	100,000
Southeastern Edition	10,000	25,000
Miami Edition	5,000	5,000

The sales or cost price of a \$100.00 advertisement would be apportioned as follows:

A \$100.00 advertisement appearing in: _____	Apportionment Factor _____	Taxable Amount _____
National Edition	<u>15,000</u> = 15.00%	\$ 15.00
	100,000	
Southeastern Edition	<u>10,000</u> = 40.00%	\$ 40.00
	25,000	
Miami Edition	<u>5,000</u> = 100.00%	\$100.00
	5,000	

(ed) Where an advertisement appears in multiple editions of a publication and a single price is charged for the advertisement, the apportionment factor shall be based on the aggregated circulation of all editions in which it appears.

EXAMPLE: Assuming the same editions and circulation data as in the preceding example, the sales or cost price of a \$100.00 advertisement appearing in all three editions would be apportioned as follows:

Total Florida circulation of all editions in which the advertisement appears _____ =
 Total U.S. circulation of all editions in which the advertisement appears _____

$$\frac{15,000 + 10,000 + 5,000}{100,000 + 25,000 + 5,000} = \frac{30,000}{130,000} = .2308 = 23.08\%$$

1 EXAMPLE: Magazine Z has a national edition, a southeastern
2 U.S. edition and a Miami edition.

3 Circulation is as follows:

4	Florida	U.S.
5	<u>Circulation</u>	<u>Circulation</u>
6		
7	National Edition	15,000 100,000
8	Southeastern Edition	10,000 25,000
9	Miami Edition	5,000 5,000

10 or recording; and, erecting and/or displaying posters,
11 stands, or other visual or aural aids intended to induce the
12 sale of a product or service or to enhance the public
13 perception of a business or its product(s) or services.

14 2. "Promotional sponsorship" means an intentional
15 effort for consideration to display before the general
16 public or a segment thereof a product or service, or the
17 name, logo, or other visual or aural representation of a
18 product, a service or a business, when the display is in
19 connection with a public event or public figure.

20 "Promotional sponsorship" includes but is not limited to
21 providing products or services to public figures for the
22 purpose of endorsement of the product, the service or the
23 provider thereof by the public figure whether expressly or
24 by association or implication; and, underwriting all or a
25 portion of the cost of an event or activity when the result
26 includes or was intended to include a heightened awareness
27 by potential customers of the existence of or benefit of a
28 product, a service, or a business.

29 3. The display or endorsement of a product, a service
30 or a business name shall be considered the act of providing
31 a promotional message for the purposes of this subsection.

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1 (d) Notwithstanding the above provisions if the
2 purchaser of promotional advertising services does not have
3 tax nexus in Florida such purchaser shall not be required to
4 remit any applicable use tax on advertising.

5 (9) Calculation of the tax on other advertising
6 services including direct mail advertising:

7 (a) The tax rate shall be applied to an apportioned
8 share of the entire sales or cost price of the advertising
9 service rendered via the distribution or placement of
10 handbills, billboards, circulars, flyers, telephone
11 directories, city directories, catalogs, programs, maps,
12 real estate brokers' listings, price/order books, ~~corporate~~
13 ~~reports to stockholders~~, and other like advertising or
14 promotional printed material without a paid circulation.
15 The apportioned share shall be calculated by multiplying the
16 entire sales price or cost price by a proportion equal to
17 the advertising media's market coverage in Florida divided
18 by its total market coverage in the United States. The
19 proportion shall be rounded to four decimal places.

20 (b) Market coverage shall be measured by the number of
21 units of the promotional medium and the geographic location
22 to which said limits are delivered by or at the direction of
23 the advertising service provider. However, for billboards,
24 the geographic location shall be based on the physical
25 location of the billboard, and for printed materials
26 inserted into newspapers or similar publications with paid
27 circulation, apportionment shall be as provided in
28 subsection (8).

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EXAMPLE 1: A company is hired to distribute flyers which have been provided to it by the purchaser of the advertising service. Total consideration for the service is \$1,000. The contract calls for one flyer to be delivered to each address on a mailing list. 5,000 of the addresses are in Florida and 15,000 are in other states. The apportionment factor for this transaction is 5,000

$$5,000 + 15,000 = .2500 \text{ or } 25.00\%$$

The taxable consideration is \$1,000 x 25.00% or \$250.00.

EXAMPLE 2: A company is hired to place advertising messages on 30 of its billboards for a single price of \$1,000. Twenty of the billboards are in Florida and 10 are in other states. The apportionment factor for this transaction is

$$\frac{20}{20 + 10} = .6667 \text{ or } 66.67\%$$

The taxable consideration is \$1,000 x 66.67% or \$666.67.

EXAMPLE 3: A company contracts with a newspaper to insert an advertising supplement into a Sunday edition of the paper for \$1,000. The advertiser provides the supplement to the newspaper. The apportionment factor applicable to advertising placed in the newspaper is 85.00%, based on its paid circulation for the prior year as determined under subsection (8).

Taxable consideration is \$1,000 x 85.00% or \$850.00.

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(10) Remittance of the tax on advertising services.

(a) If the sale of advertising services is in Florida, it is the responsibility of the seller to collect and remit the tax, irrespective of whether the purchaser holds an exempt purchase permit, unless the advertising is purchased pursuant to a resale permit in which case the person reselling the advertising shall collect and remit the tax.

(b) If the sale of the advertising service is not in Florida, any applicable use tax shall be remitted by the purchaser of the advertising service.

(c) Notwithstanding paragraphs (a) and (b), it is the responsibility of the purchaser to remit any applicable sales or use tax on the purchase of promotional advertising services, including promotional sponsorships.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1, 2, 3, 4 and 6, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

2 12-ER-87-45 Motion Picture, Radio and Television
3 Broadcasting, Orchestra, Band, Theatrical and Entertainment
4 Services.

5 (1) A producer, including a sub producer or coproducer,
6 of motion pictures is the consumer of tangible property used
7 in making a production and tax applies to all sales of such
8 property to him, inclusive of charges for fabricating or
9 processing. No tax liability arises from fabrication labor
10 performed by a person for his own account, using his own
11 equipment and his own employees, as a producer, subproducer
12 or coproducer of a qualified motion picture as defined in s.
13 212.0592(18)(b), F.S., as created by s. 3 of Chapter 87-6,
14 Laws of Florida; when such production is prepared for
15 showing on screens or through television, for either
16 theatrical, commercial, advertising, or educational
17 purposes.

18 (2) Charges for ~~involving~~ the rental, lease, or
19 granting a license for the use of real property when such
20 property is used as an integral part of the performance of
21 qualified production services as defined in s.
22 212.0592(18)(a), F.S., as created by s. 3 of Chapter 87-6,
23 Laws of Florida, are not taxable only where the transactions
24 are clearly identifiable in the records of the lessor~~s~~ or
25 person receiving the rent or license fee, ~~records.~~

26 (3) Rental receipts from motion picture films, when an
27 admission is charged for viewing such film is exempt.
28 However, this exemption shall not be construed to exempt the
29 sale or use of advertising.

30 (4) Rental receipts from advertising films are subject
31 to tax, regardless of whether an admission is charged for
32 viewing such film.

33 (5) Tax applies to leases of video cassettes,
34 videotapes, and videodiscs for private use under which the
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1 lessee or renter does not obtain or acquire the right to
2 license, broadcast, exhibit, or reproduce the video
3 cassettes, videotape, or videodisc.

4 (6) Distribution activities and services performed
5 directly in connection with distribution of a qualified
6 motion picture as defined in s. 212.0592(18)(b), F.S., as
7 created by s. 3 of Chapter 87-6, Laws of Florida, are not
8 subject to tax.

9 (7) Film, and license fees and direct charges for
10 films, video tapes, and transcriptions used by television
11 stations, radio stations or networks are exempt. However,
12 this exemption shall not be construed to exempt the sale or
13 use of advertising.

14 (8) "Residuals" are deemed to be consideration paid to
15 an actor in the nature of an intangible and are not
16 consideration paid for a service therefore they are not
17 taxable as a service.

18 ~~(8) License fees and direct charges for films,~~
19 ~~videotapes, and transcriptions used by television stations~~
20 ~~or radio stations or networks for advertising are not~~
21 ~~subject to tax.~~

22 (9) Line charges and talent fees used by television or
23 radio stations and networks in producing radio or television
24 broadcasts are subject to tax.

25 (10) The purchase or lease for use in this state of
26 motion picture equipment, video equipment and sound
27 recording equipment (equipment meeting the definition of
28 "section 38 property" as defined in s. 48(a)(1)(A) and
29 (B)(i) of the Internal Revenue Code), ~~i.e., depreciable~~
30 ~~equipment with a useful life of at least 3 years) may~~
31 qualify for the exemption authorized pursuant to s.
32 212.08(5)(f), F.S., if such equipment is used exclusively by
33 the producer, subproducer, or coproducer as an integral part
34 of production activities directed toward the preparation of
35 master tapes and master records embodying sound, or toward
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1 the preparation of motion pictures or television productions
2 commercially produced for sale or for showing on screens or
3 broadcasting on television. However, the purchase, lease or
4 use of such equipment by television, radio broadcasting or
5 cable companies licensed by the Federal Communications
6 Commission is subject to tax. This exemption expires and is
7 void July 1, 1988, see Rule 12A-1.085, F.A.C.

8 (11) The gross receipts from the sale, lease, storage,
9 use or other consumption in this state of master tapes or
10 master records embodying sound or master films or master
11 video tapes may qualify for the partial exemption authorized
12 pursuant to s. 212.08(12), F.S. This partial exemption
13 expires and is void July 1, 1988, see Rule 12A-1.085,
14 F.A.C.

15 (12)(a) Motion picture services and activities
16 enumerated in SIC Major Group 78 are deemed to be taxable
17 transactions, except those services and activities
18 specifically exempted therefrom by Part I of Chapter 212,
19 F.S., subject to the conditions appertaining to such
20 exemption. For an explanation as to exempt motion picture
21 services and activities see Rules 12-ER-87-11(16) and
22 12A-1.085, F.A.C.

23 (b) Motion picture services and activities enumerated
24 in SIC Major Group 78 include:

25 1. Production of theatrical and nontheatrical motion
26 pictures for exhibition, other than for television,

27 including:

- 28 a. Audiovisual program production;
 - 29 b. Cartoon motion picture production;
 - 30 c. Educational motion picture production;
 - 31 d. Industrial motion picture production;
 - 32 e. Motion picture production and distribution;
 - 33 f. Non theatrical motion picture production;
 - 34 g. Religious motion picture production; and
 - 35 h. Training motion picture production.
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1 4. Renting theatrical and nontheatrical film to both
2 television and non-television exhibitors including:

- 3 a. Film exchanges;
4 b. Motion picture distribution;
5 c. Film rental; and
6 d. Tape distribution for TV.

7 5. Auxiliary services to motion picture distribution,
8 including:

- 9 a. Booking agencies;
10 b. Film delivery;
11 c. Film libraries;
12 d. Film purchasing agencies; and
13 e. Theatrical booking agencies;

14 6. Motion picture theaters engaged in the exhibition
15 of motion pictures, including:

- 16 a. "Four-wall" (indoor) theaters;
17 b. "Drive-in" (outdoor) theaters;
18 c. Motion theater exhibitors, itinerants; and
19 d. Motion picture exhibitors for airlines.

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21 (13)(a) Theatrical producer, band, orchestra and
22 entertainment services enumerated in SIC Major Group 792 for
23 which no admission is charged are ~~and~~ deemed to be taxable
24 transactions, except those services specifically exempted
25 therefrom by Part I of Chapter 212, F.S., subject to the
26 conditions appertaining to such exemption.

27 (b) Theatrical producer, band, orchestra, and
28 entertainment services enumerated in SIC Major Group Number
29 792 include:

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31 1. Actors;
32 2. Ballet production;
33 3. Booking agencies, theatrical (except motion
34 picture);
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- 1 4. Burlesque companies;
- 2 5. Classical music groups or artists;
- 3 6. Concert artists;
- 4 7. Concert management service;
- 5 8. Concert organizations;
- 6 9. Costume design, theatrical;
- 7 10. Dance bands;
- 8 11. Employment agencies (theatrical, radio and
- 9 television);
- 10 12. Entertainers;
- 11 13. Entertainment groups;
- 12 14. Entertainment service (entertainers for
- 13 restaurants, clubs, radio and television);
- 14 15. Jazz music groups or artists;
- 15 16. Legitimate theater producers;
- 16 17. Magicians;
- 17 18. Opera companies;
- 18 19. Orchestras;
- 19 20. Plays (road companies and stock companies);
- 20 21. Popular music groups or artists;
- 21 22. Radio and television program producers;
- 22 23. Rental of theatrical scenery;
- 23 24. Repertory or stock companies, theatrical;
- 24 25. Scenery design, theatrical;
- 25 26. Stock companies, theatrical;
- 26 27. Symphony orchestras;
- 27 28. Television program, including commercials,
- 28 producers;
- 29 29. Theatrical companies amateur;
- 30 30. Theatrical equipment rental;
- 31 31. Theatrical lighting, on a contract basis;
- 32 32. Theatrical production, except motion picture;
- 33 33. Theatrical ticket agencies;
- 34 34. Ticket agencies, theatrical; and
- 35 35. Vaudeville companies.

1 (14) Management, consulting, and public relations
2 services, enumerated in SIC Industry Number 7392, such as
3 business analysts, business consultants, business
4 economists, business research service, economic research,
5 market analysis or research, opinion research, promotion
6 service, and sales promotion (not involving sales of
7 merchandise), are deemed to be taxable transactions, except
8 those services specifically exempt therefrom by Part I of
9 Chapter 212, F.S., subject to the conditions appertaining to
10 such exemption.

11 (15) Business services enumerated in SIC Major Group
12 Number 7399, such as agents and brokers (for artists and
13 authors), copyright protection service, music copying
14 service, playwrights brokers, radio broadcasting music
15 checkers, and radio transcription service, are deemed to be
16 taxable transactions, except those services specifically
17 exempted therefrom by Part I of Chapter 212, F.S., subject
18 to the conditions appertaining to such exemption.

19 (16) Services enumerated in SIC Group Number 899, such
20 as authors, radio commentators, song writers, weather
21 forecasters, writers, and artists working on their own
22 account, are deemed to be taxable transactions, except those
23 services specifically exempt therefrom by Part I of Chapter
24 212, F.S., subject to the conditions appertaining to such
25 exemption.

26 (17) The amount derived by entertainers or performers is
27 subject to tax when these services are performed in
28 Florida, except as described in Rule 12-ER-87-11(16).

29 **(b) Use tax will be due on such services performed**
30 **outside Florida for the benefit of a purchaser in Florida or**
31 **a purchaser doing business in Florida.**

32 **(18)(a)** Commissions received by managers or agents of
33 entertainers or performers for the manager's or agent's
34 services in Florida are subject to tax, except as described
35 in 12-ER-87-11(16).

1 **(b) Use tax will be due on such services performed**
2 **outside Florida for the benefit of a purchaser in Florida or**
3 **a purchaser doing business in Florida.**

4 **Specific Authority 212.17(6), 212.18(2) FS.; Section 33,**
5 **Chapter 87-6, Laws of Florida.**

6 **Law Implemented 212.08(5)(f)(12), FS, Sections 3, 7, 8, 12**
7 **and 14, Chapter 87-6, Laws of Florida.**

8 **History - New 7-1-87.**

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3 12-ER-87-46 Religious, Charitable, Scientific,
4 Educational and Veterans' Institutions and Organizations;
5 Federal and State Chartered Credit Unions; State Theater
6 Program Facilities; Florida Retired Educators Association
7 and its Local Chapter; Volunteer Fire Departments;
8 Organizations providing Special Educational, Cultural,
9 Recreational, and Social Benefits to Minors; Military
10 Museums; Homes for the Aged, Nursing Homes or Hospice.

11 (1) The sale of a service by those exempt institutions
12 or organizations enumerated in paragraphs (1)(b), (e) and
13 (g) is taxable, unless the services are specifically exempt
14 from tax, see 12-ER-87-11. The sale of any service by those
15 exempt institutions or organizations enumerated in
16 paragraphs (1)(a), (c), (d) and (f) are specifically exempt
17 from tax, as indicated below.

18 (a) A sale of a service directly to or by churches is
19 exempt.

20 (b) A sale of a service directly to a nonprofit
21 religious, nonprofit educational, nonprofit scientific,
22 nonprofit charitable institution or organization, for use in
23 the course of its customary nonprofit religious, nonprofit
24 educational, nonprofit scientific, nonprofit charitable
25 activities, including those of church cemeteries, is exempt.
26 The sale of services by any nonprofit religious organization
27 described in SIC Industry Number 866, when provided in
28 carrying out its customary nonprofit religious activity, is
29 exempt.

30 (c) A sale of a service is exempt if made directly to
31 or by nonprofit organizations incorporated in accordance
32 with Chapter 617 which have qualified under s. 501(c)(3) of
33 the Internal Revenue Code of 1954, as amended, which have
34 been designated as State Theater Program facilities as
35 provided in s. 265.287.

1 (d) A sale of a service is exempt if made directly to
2 or by nonprofit corporations which hold current exemptions
3 from federal corporate income tax pursuant to s. 501(c)(3),
4 U.S. Internal Revenue Code, 1954, as amended, and which
5 either qualify as homes for the aged pursuant to s.
6 196.1975(2) or are licensed as a nursing home or hospice
7 under the provisions of Chapter 400.

8 (e) A sale of a service made directly to the state
9 headquarters of veterans' organizations and the state
10 headquarters of their auxiliaries when used in carrying out
11 their customary veterans organization activities, is exempt.
12 If an auxiliary does not maintain a permanent state
13 headquarters, the transactions involving sales or leases
14 used to maintain the office of the highest ranking state
15 official are exempt.

16 (f) A sale of a service directly to or by nonprofit
17 organizations providing special educational, cultural,
18 recreational and social benefits to minors which are
19 incorporated pursuant to Chapter 617 or which hold a current
20 exemption from federal corporate income tax pursuant to s.
21 501(c)(3), United States Internal Revenue Code, whose
22 primary purpose is providing activities which contribute to
23 the development of good character, good sportsmanship, or to
24 the educational or cultural development of minors ~~in this~~
25 ~~state~~ is exempt. This exemption is extended only to that
26 level of the organization ~~located in Florida~~ that has a
27 salaried executive officer or an elected non-salaried
28 executive officer.

29 (g) A sale of a service directly to nonprofit
30 corporations which hold a current exemption from federal
31 corporate income tax pursuant to s. 501(c)(3), United States
32 Internal Revenue Code, 1954, as amended, whose primary
33 purpose is to raise money for military museums is exempt.

34 (h) Institutions or organizations desiring to qualify
35 for these exemptions must obtain from the Department of
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1 Revenue a Consumer's Certificate of Exemption (DR-5) which
2 shall be presented at the time of sale directly to the
3 dealer. Additionally, payment must be made directly to the
4 dealer by the exempt entity. This exemption shall not inure
5 to any transaction otherwise taxable when payment is made by
6 an exempt entity's employee by any means including but not
7 limited to cash, check or credit card whether or not the
8 employee is subsequently reimbursed by the exempt entity.

9 (i) To procure a Consumer's Certificate of Exemption
10 (DR-14) the exempt entity shall file an Application for
11 Consumer Certificate of Exemption (DR-5) with the Department
12 of Revenue. Applications for Consumer's Certificate of
13 Exemption (DR-14) are available, without cost upon written
14 request directly to the Department of Revenue, Supply
15 Section, Tallahassee, Florida 32399-0100. Upon formal
16 approval of the application, the Department shall issue a
17 Consumer's Certificate of Exemption (DR-14). The effective
18 date of the Consumer's Certificate of Exemption (DR-14)
19 shall be the postmark date of the application for Consumer
20 Certificate of Exemption (DR-5), if mailed, or the date
21 received by the Department, if delivered by means other than
22 mail.

23 (2) Political subdivisions of the state and public
24 libraries which qualify for and maintain a current
25 Consumer's Certificate of Exemption (DR-5) shall utilize
26 their sales tax exemption certificates to purchase with
27 funds provided by the following group services necessary for
28 the operation of such groups, in addition to the normal
29 exempt purchases that political subdivisions and libraries
30 are empowered to make:

31 (a) School districts shall purchase on a tax exempt
32 basis necessary services requested by parent-teacher
33 organizations.

34 (b) Counties and municipalities shall purchase on a tax
35 exempt basis necessary services requested by REACT groups,
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1 neighborhood crime watch groups, and state or locally
2 recognized organizations solely engaged in youth activities
3 identical to those discussed in paragraph (f) of subsection
4 (1) of this rule.

5 (c) Public libraries shall purchase on a tax exempt
6 basis necessary services requested by groups solely engaged
7 in fund-raising activities for such libraries.

8 (3) A Chamber of Commerce is not entitled to exemption
9 on its purchases of services as it is not a religious,
10 educational or charitable institution. The funds derived
11 from the cities and counties by taxation paid to the Chamber
12 of Commerce do not exempt it on the expenditure of those
13 funds unless the service is purchased directly by the city
14 or county.

15 (4) Sales to civic, commercial, cooperative, fraternal,
16 social, labor and veterans organizations (except sales to
17 state headquarters of nationally chartered veteran
18 organizations) are not exempt under Part I, Chapter 212,
19 F.S. Services sold to them are taxable, unless specifically
20 exempt under Part I of Chapter 212, F.S., in the same manner
21 as those made to other dealers. However, membership dues
22 and membership fees to such organizations are not taxable,
23 see 12-ER-87-11(15)(a)4.

24 (5) Sales of services to or purchases of services by
25 federally chartered and state chartered credit unions are
26 taxable. The sale of services by federally chartered and
27 state chartered credit unions are taxable to the extent that
28 those services are taxable, see 12-ER-87-13.

29 (6) Sales of services to the Florida Retired Educator's
30 Association and its local Chapters are taxable.

31 (7) Sales of services to volunteer fire departments are
32 taxable.

33 (8) Holders of Consumer Certificates of Exemption
34 (DR-14) who provide services taxable under s. 212.059 must
35 register with the Department by filing a DR-1 and must
36 obtain a Certificate of Registration.

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Specific Authority 212.17(6). 212.18(2) FS.; Section 33,
Chapter 87-6 Laws of Florida.
Law Implemented 212.08(7) as amended by Section 14, Chapter
87-6, Laws of Florida, 213.12 FS.
History - New 7-1-87.

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3 12-ER-87-47 Film Rentals.

4 (1)(a) Film rentals are exempt from tax when an
5 admission is charged for viewing such film.

6 (b) License fees and direct charges for films, video
7 tapes and transcripts used by television or radio stations
8 or networks are exempt from tax.

9 (c) However this exemption shall not be construed to
10 exempt the sale, rent, or use of films for advertising.

11 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
12 Chapter 87-6 Laws of Florida.

13 Law Implemented Sections 6 and 14, Chapter 87-6, Laws of
14 Florida.

15 History - New 7-1-87.

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2 12-ER-87-48 Fisheries.

3 (1)(a) Nets and materials, and parts used in the
4 repair thereof, are exempt when used exclusively by
5 commercial fishermen. (Sponge fishermen qualify as
6 commercial fishermen.) To purchase such nets tax exempt, a
7 certificate in substantial conformity with the certificate
8 suggested in Rule 12A-1.039 must be executed.

9 (b) Effective July 1, 1987, the labor to repair nets
10 used by commercial fishermen are fully taxable.

11 (2) Where the transaction involves both the sale of a
12 taxable service and the sale of an exempt item, the
13 transaction must be separately identified and stated with
14 respect to the taxable service and the exempt portion of the
15 transaction as a condition to exempt the exempt portion of
16 the transaction. If the exempt portion is not separately
17 stated and identified the total transaction will be presumed
18 to be for labor services and taxable, see 12-ER-87-5.

19 (3) The sale of charter boats, party boats, pleasure
20 fishing boats is fully taxable. Equipment, materials, parts
21 and labor used to repair and maintain such boats and
22 equipment are fully taxable without proration.

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24 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
25 Chapter 87-6 Laws of Florida.

26 Law Implemented Sections 1, 2 and 3, Chapter 87-6, Laws of
27 Florida.

28 History - New 7-1-87.
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2 12-ER-87-49 Governmental Units.

3 (1) All sales, including sales of service, made direct
4 to the United States Government, a state, the State of
5 ~~Florida~~ or any county, municipality or political subdivision
6 of a in this state are exempt, except machines, equipment,
7 parts and accessories thereof used in the generation,
8 transmission or distribution of electrical energy
9 ~~electricity~~, when payment is made directly to the dealer by
10 the governmental entity. However, such governmental
11 entities desiring to qualify for the exemption must obtain
12 from the Department of Revenue a Consumer's Certificate of
13 Exemption (DR-5). This exemption shall not inure to any
14 transaction otherwise taxable when payment is made by a
15 government employee by any personal means, including but not
16 limited to, cash, check or credit card when the employee is
17 subsequently reimbursed by the governmental entity. The
18 exemption provided in this subsection shall be strictly
19 defined, limited and applied to each entity as provided
20 herein. For sale of services by governmental entities, see
21 Rule 12-ER-87-11(8) and 12-ER-87-23.

22 (2) To procure a Consumer's Certificate of Exemption
23 (DR-5) the exempt entity shall file an Application for
24 Consumer Certificate of Exemption (DR-14) with the
25 Department of Revenue. Applications for Consumer's
26 Certificate of Exemption (DR-5) are available, without cost
27 upon written request directly to the Department of Revenue,
28 Supply Section, Tallahassee, Florida 32399-0100. Upon
29 formal approval of the application, the Department shall
30 issue a Consumer's Certificate of Exemption (DR-5).

31 (3) See also for construction Rule 12-ER-87-31.

32
33 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
34 Chapter 87-6 Laws of Florida.
35 Law Implemented Sections 3 and 14, Chapter 87-6, Laws of

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Florida.
History - New 7-1-87.

2 12-ER-87-50 **Newspapers, Magazines and Periodicals.**

3 (1)(a) Effective July 1, 1987, the purchase of or
4 retail sale of copies of newspapers, magazines and other
5 periodicals is taxable at the retail price.

6 (b)1. Subscriptions to newspapers, magazines and
7 periodicals are taxable when, at any time during the
8 subscription period, a copy or copies ~~is or~~ are transported
9 from a point of origin in this state to a destination that
10 is also in this state or where a copy or copies ~~is or~~ are
11 transported from a point of origin outside this state to a
12 destination in this state. Such subscriptions are exempt
13 when the point of destination is outside this state, see
14 Rule 12A-1.064(2), F.A.C.

15 2. If a subscription to ~~a~~ newspapers, or ~~to a~~ magazines
16 ~~which was~~ entered as second class mail and sold for an
17 annual or longer period of time, was issued and paid for, or
18 contractually obligated to be paid, prior to July 1, 1987,
19 the subscription is not subject to tax even though the
20 payments may be received after July 1, 1987. However, any
21 new subscription or renewal of an existing subscription
22 after July 1, 1987, is taxable.

23 (c) The sale of advertising by ~~Payments to~~ newspapers,
24 magazines and periodicals is ~~for advertisements are~~
25 taxable.

26 (d) Effective July 1, 1987, circulars, flyers,
27 advertising supplements or like publications which are
28 distributed with a newspaper are taxable as advertising
29 material when purchased by the person doing the advertising
30 notwithstanding the fact that such advertising material may
31 be printed by the newspaper or may be shipped directly from
32 the printer to the newspaper company and the advertising
33 material carries the newspapers masthead, gang logo,
34 supplement line or any equivalent thereof.

1 (e) ~~The charges the newspaper company makes~~ to the
2 advertiser for stuffing and/or delivering advertising
3 material with the newspaper is a taxable service.

4 (f) Sales by a press clipping service of its clippings
5 are taxable.

6 (g) The purchase of newspapers, magazines and
7 periodicals to be given away is taxable.

8 (h) A printer (dealer) who operates a printing plant in
9 which printed matter is manufactured for his own use shall
10 pay a tax based upon the "cost price" as defined in s.
11 212.02(5), F.S., as amended by Chapter 87-6, L.O.F.
12 ~~consumption, or for use in connection with fulfilling~~
13 ~~contracts, is taxable upon all materials going into the~~
14 ~~manufactured product. Costs of labor, power and other plant~~
15 ~~expenses incurred with respect to such items of tangible~~
16 ~~personal property are taxable.~~

17 (2)(a) Whenever a newspaper company sells its
18 newspapers to an independent contractor (carrier) and in
19 assisting its carriers, totally bills or invoices all the ultimate
20 consumer at the retail subscription price or at the retail
21 price of the newspaper and collects the same, the newspaper
22 company will be liable for collecting and remitting the
23 appropriate tax. In this instance, the carrier is not
24 required to register as a dealer.

25 (b) However, whenever a newspaper company sells its
26 newspapers to a carrier and the carrier bills its customers
27 and collects the same, the carrier must:

- 28 1. register as a dealer with the Department of
29 Revenue;
- 30 2. submit a resale certificate at the time of purchase
31 to the newspaper company to buy newspapers tax exempt for
32 resale. If the carrier fails to present a resale
33 certificate to the newspaper company or the newspaper
34 company fails to maintain such properly completed resale
35 certificates, the newspaper company must charge tax on its
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1 sales to the carrier and such tax must be on the retail
2 price. In addition, the tax would be due on the ultimate
3 sale of the newspaper by the carrier; and

4 3. charge, collect and remit the appropriate tax to
5 the Department of Revenue.

6 (3) The tax must be separately stated as Florida sales
7 tax on the customer's charge ticket, invoice, or other
8 tangible evidence of sale.

9 (4) Sales of newspapers or magazines by the newspaper
10 company or its carriers to retail outlets are taxable,
11 unless the retail outlet provides the newspaper and its
12 carriers ~~seller~~ with a resale certificate at the time of
13 sale, see Rule 12A-1.039, F.A.C.

14 (5) Whenever the newspaper company or its carriers,
15 that are required to register as dealers, sells newspapers
16 through vending machines (rack sales), the newspaper company
17 or its carriers will be considered to be in compliance with
18 the law if they remit tax at the effective rate of 6.75
19 percent of their gross sales. To compute the correct amount
20 of tax due, the newspaper company or its carriers should
21 divide their total receipts from their machines by 1.0675 to
22 compute their gross sales and then subtract their gross
23 sales from the total receipts to arrive at the amount of tax
24 due. This 6.75 percent effective tax rate recognizes
25 multiple sales and the difference in price between daily and
26 Sunday newspapers. The tax must also be separately in a
27 conspicuous place on the face of such vending machine.

28 (6) The purchase of newspaper vending machines and the
29 repair thereof are taxable.

30 (7) When a newspaper, magazine or periodical rack is
31 placed on real property or tangible personal property under
32 a contract or similar provision which grants the rack owner
33 the right to use or occupy such property for a
34 consideration, the portion of the proceeds from the
35 operation of the newspaper rack paid to the owner, lessor or
36

1 other person granting the newspaper rack owner or operator
2 the right to use or occupy the real property is taxable as
3 payment for a license to use real property or tangible
4 personal property. This tax shall be in addition to the
5 total amount of tax due and payable on the receipts from the
6 newspaper rack.

7 (8) Newspaper delivery service provided to the
8 publisher or printer of a newspaper are exempt.

9
10 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
11 Chapter 87-6 Laws of Florida.

12 Law Implemented 212.031, 212.05 FS.; Section 1 and 5,

13 Chapter 86-166, Laws of Florida, Section 6, Chapter 87-6,
14 Laws of Florida.

15 History - New 7-1-87.
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2
3 12-ER-87-51 **Radio and Television Stations.**

4 (1) The sale of radio and television equipment,
5 including expendable items, parts, accessories and supplies,
6 is taxable.

7 (2) Effective July 1, 1987, the following are taxable:

8 (a) The charge for wired music service. Tax is also
9 due on all equipment purchased to render the service,
10 including all recordings of music, songs, speeches, etc.,
11 and all other tangible personal property purchased to be
12 used in connection with such service;

13 (b) Payments to such stations for advertisements, see
14 12-ER-87-44; and

15 (c) Charges to radio stations, for line charges and
16 talent fees.

17 Specific Authority 212.17(6), 212.18(2) F.S.; Sections 6 and
18 33, Chapter 87-6 Laws of Florida.

19 Law Implemented Sections 1 and 6, Chapter 87-6, Laws of
20 Florida.

21 History - New 7-1-87.

2
3 12-ER-87-52 Admissions.

4 (1)(a) Effective July 1, 1987, admissions to athletic
5 or other events sponsored ~~held~~ by elementary schools, junior
6 high schools, middle schools, high schools, vocational
7 technical schools, community colleges, public or private
8 colleges and universities, deaf and blind schools,
9 facilities of Division of Youth Services and state
10 correctional institutions when only student, faculty, or
11 inmate talent is utilized are exempt, taxable. However,
12 this exemption shall not apply to admission to athletic
13 events sponsored by an institution within the State
14 University System and the proceeds of the tax collected on
15 such admissions shall be retained and utilized by each
16 institution to support women's athletics as provided in s.
17 240.533(4)(c), F.S.

18 ~~(b) When tickets are sold, the tax on admissions is due~~
19 ~~under the brackets outlined in s. 212.12, F.S. The amount~~
20 ~~of the tax shall be printed on each ticket or, if desired, a~~
21 ~~total selling price may be stated with the words "sales tax~~
22 ~~included" printed directly under the over all price of the~~
23 ~~ticket, see Rule 12A-1.005(4)(b), F.A.C. When tickets are~~
24 ~~not used, the tax shall be due on the gross receipts for~~
25 ~~admissions.~~

26 (b) Effective July 1, 1987, admissions paid by a
27 student, or on his behalf, to any required place of sport or
28 recreation are exempt, if the student's participation in the
29 sport or recreational activity is required as a part of a
30 program or activity sponsored by, and under the jurisdiction
31 of, the student's educational institution, provided his
32 attendance is as a participant and not as a spectator.
33 ~~regardless of whether the student's participation in the~~
34 ~~sport or recreational activity is required as a part of a~~
35 ~~program or activity sponsored by and under the jurisdiction~~

1 ~~of, the student's educational institution.~~

2 (c) Through June 30, 1987, no tax shall be levied on
3 dues, members fees and admission charges imposed by
4 not-for-profit sponsoring organizations or community or
5 recreational facilities. To receive this exemption, the
6 organization making any such charges for dues, membership
7 fees and admissions must qualify as a not-for-profit entity
8 under the provisions of Section 501(c)(3) of the Internal
9 Revenue Code of 1954, as amended. Effective July 1, 1987,
10 no tax shall be levied on dues, membership fees and
11 admission charges imposed by not-for-profit religious
12 sponsoring organizations. To receive this exemption, the
13 sponsoring organization must qualify for a not-for-profit
14 entity under the provisions of s. 501(c)(3) of the United
15 States Internal Revenue Code of 1954 as amended, such dues,
16 ~~membership fees and admissions are taxable unless otherwise~~
17 ~~provided by law, see 12-ER-87-11(15).~~

18 (d) Through June 30, 1987, no tax shall be levied on
19 any charge for admission by any organization described in
20 Section 170(c) of the Internal Revenue Code of 1954, as
21 amended, to live performances of ballet, dance, or choral
22 performances, concerts (instrumental and vocal), plays (with
23 and without music), operas and readings, ocean science
24 centers, museums of science, historical museums and
25 botanical and zoological gardens, and exhibitions of
26 paintings, sculpture, photography, graphic and craft arts.
27 Effective July 1, 1987, unless expressly exempted herein,
28 such charges are taxable.

29 (e) Effective July 1, 1987, no tax is levied on
30 admissions to athletic or other events sponsored by
31 governmental entities.

32 (2)(a) The term "admissions" means and includes the net
33 sum of money after deduction of any federal taxes for
34 admitting a person or vehicle or persons to any place of
35 amusement, sport or recreation or for the privilege of
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1. entering or staying in any place of amusement, sport or
2. recreation, including but not limited to theatres, mini
3. theatres, outdoor theatres, shows, exhibitions, games, races
4. or any place where a charge is made by way of sale of
5. tickets, gate charges, seat charges, box charges, season
6. pass charges, cover charges, green fees, participation fees,
7. entrance fees or other fees or receipts of anything of value
8. measured on an admission or entrance or length of stay or
9. seat box accommodations in any place where there is any
10. exhibition, amusement, sport or recreation and all dues paid
11. to private clubs providing recreational facilities,
12. including but not limited to golf, tennis, swimming,
13. yachting and boating facilities.

14. (b) Effective July 1, 1987, the term "admissions"
15. includes any charge for entering or staying upon any boat or
16. vessel for the privilege of fishing.

17. (c) Admissions to county, state and regional
18. agricultural fairs are exempt through June 30, 1987.
19. Effective July 1, 1987, admissions to such events are
20. taxable unless sponsored by a governmental entity.

21. (d) Where the boat owner supplies the crew which
22. remains under the control and direction of the owner and
23. makes a charge measured on an admission or entrance or
24. length of stay aboard the vessel for the privilege of
25. participating in a sport or recreation, the charge is
26. taxable as an admission.

27. (e) Charges measured on an admission or entrance fee
28. for the privilege of participating in a recreational or
29. sightseeing trip in an aircraft, boat, including dinner
30. boat, or bus, are taxable.

31. (f) Dues paid by persons for membership in clubs, such
32. as sewing clubs, bowling clubs, square dancing clubs, bridge
33. clubs and gun clubs, which provide no recreational or other
34. facilities for its members, are exempt from tax on
35. admissions, ~~through June 30, 1987, but, effective July 1,~~
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~~1987, such amusement or recreational dues are subject to tax, regardless of whether such facility is furnished for its members, see 12-ER-87-11(15) and 12-ER-87-33. Any charge made by any such club for admission to any event conducted or sponsored by the club is taxable.~~

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Section 1, Chapter 86-166, and Section 7, Chapter 87-6, Laws of Florida.
History - New 7-1-87.

2
3 12-ER-87-53 **Professional, Insurance, or Personal**
4 **Service Transactions.**

5 (1) Effective July 1, 1987, professional, insurance or
6 personal service transactions which involve sales as
7 inconsequential elements for which no separate charges are
8 made are taxable, unless specifically exempt under Part I of
9 Chapter 212, see 12-ER-87-11.

10 (2) The taking of dictation by a public stenographer
11 and stenographic transcriptions are taxable. Charges for
12 attendance and the stenographic recording of proceedings at
13 a trial, hearing, conference or similar function by a court
14 reporter are taxable. Charges made by court reporters for
15 transcripts of proceedings are taxable. Charges for
16 transcripts to third persons who are not parties to the
17 proceedings for which the reporter was engaged are taxable.

18 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
19 Chapter 87-6 Laws of Florida.

20 Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of
21 Florida.

22 History - New 7-1-87.
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3 12-ER-87-54 **Resource Recovery.**

4 (1) The exemption for resource recovery and equipment
5 used in a facility owned and operated exclusively by or on
6 behalf of any county or municipality scheduled to sunset
7 July 1, 1987, has been reenacted, see Rule 12A-1.001(28),
8 F.A.C. However, effective July 1, 1987, the installation
9 labor to install such machinery and equipment is fully
10 taxable.

11 (2) Where the transaction involves ~~both~~ the sale of
12 both a taxable service and ~~the sale of~~ an exempt item, the
13 taxable service and exempt item transaction must be
14 separately identified and stated ~~with respect to the taxable~~
15 ~~service and the exempt portion of the transaction~~ as a
16 condition to exempting the exempt item in portion of the
17 transaction. If the exempt item portion is not separately
18 stated and identified, the total transaction will be
19 presumed to be for taxable labor services, ~~and taxable.~~ See
20 12-ER-87-5 ~~and~~ ~~also, see~~ 12-ER-87-31, for rules pertaining
21 to constructing or improving real property at a resource
22 recovery facility.

23 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
24 Chapter 87-6 Laws of Florida.
25 Law Implemented Sections 1, 5 and 14, Chapter 87-6, Laws of
26 Florida.
27 History - New 7-1-87.

2
3 12-ER-87-55 **Solar Energy.**

4 The sale at retail, rental, use, consumption,
5 distribution, or storage to be used or consumed in this
6 state of a solar energy system or any component thereof
7 as defined in Section 212.02(19), F.S., is exempt through
8 June 30, 1987. Effective July 1, 1987, the sale, rental,
9 use, consumption, distribution, or storage to be used or
10 consumed in this state of a solar energy system or any
11 component thereof is taxable.

12 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
13 Chapter 87-6 Laws of Florida.

14 Law Implemented Section 8, Chapter 86-166 and Section 25,
15 Chapter 87-6, Laws of Florida.

16 History - New 7-1-87.
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3 12-ER-87-56 Charges by Dealers Who Adjust, Apply,
4 Alter, Install, Maintain, Remodel or Repair Tangible
5 Personal Property; Interior Decorator Charges; Wrecker and
6 Towing Charges.

7 (1) Effective July 1, 1987, the total consideration for
8 labor ~~to~~ or material used to alter, remodel, maintain,
9 adjust or repair tangible personal property is taxable.

10 (2) The total consideration for cleaning or regulating
11 tangible personal property is taxable.

12 (3) Any ccharges by an interior decorator is are taxable,
13 whether materials or supplies are used, either as a sales or
14 uses of tangible personal property or as a charges for
15 services.

16 (4) Wrecker or towing charges are taxable, whether or
17 not the charge is separately stated on the customer's
18 invoice. (See Rule 12-ER-87-11(47) for emergency road
19 service)

20 (5)(a) Effective July 1, 1987, services used directly
21 and exclusively for the maintaining, retrofitting,
22 repairing, or replacing of industrial machinery and
23 equipment at fixed locations are exempt if the machinery and
24 equipment is used for the purposes described in paragraph
25 (d) and provided no parts are used in providing such
26 service.

27 (b) For purposes of this exemption, "industrial
28 machinery and equipment" means section 38 property as
29 defined in s. 48(a)(1)(A) and (B)(i) of the Internal Revenue
30 Code of 1954, as amended, provided such industrial machinery
31 and equipment is used as an integral part of the
32 manufacturing, processing, compounding, or producing
33 fabricating or preparing for shipment items of tangible
34 personal property for sale.

35 (c) Such machinery or equipment must be used to
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1 manufacture, process, compound, produce, fabricate, or
2 prepare for shipment items of tangible personal property for
3 sale.

4 (d) This exemption only applies to the tax imposed on
5 such services in excess of \$100,000 of tax during each
6 calendar year. For the purposes of implementing this
7 exemption the first calendar year shall be limited to July
8 1, 1987, through December 31, 1987. However, each calendar
9 year thereafter shall mean January 1 through December 31.

10 (e) This exemption does not apply to services relating
11 to machinery or equipment purchased or used by electric
12 utility companies, communications companies, phosphate or
13 other solid minerals severance, mining, or processing
14 operations, oil or gas exploration or production operations,
15 printing or publishing firms, any firm subject to regulation
16 by the Division of Hotels and Restaurants of the State
17 Department of Business Regulation, or any firm which does
18 not manufacture, process, compound, or produce for sale
19 items of tangible personal property.

20 (f) This exemption does not apply to the purchase of
21 services related to industrial machinery and equipment when
22 such services are included as a part of the purchase of
23 tangible personal property or were subject to tax as part of
24 a sale prior to July 1, 1987; and this exemption does not
25 expand the exemptions provided in s. 212.08(5)(b)1. or 2.
26 (relating to the sale or purchase of industrial machinery
27 and equipment for new and expanding businesses) beyond their
28 meaning prior to July 1, 1987.

29 (g) In order to qualify for this exemption, the
30 business entity must comply with the following:

31 1. the business entity shall make application
32 with the Department of Revenue for self-accrual of sales tax
33 as provided in Section 32, Chapter 87-6, L.O.F.,

34 2. the business entity must pay sales tax in the
35 amount of \$100,000 during the calendar year for services
36

1 used directly and exclusively for the maintaining,
2 retrofitting, repairing, or replacing of such industrial
3 machinery and equipment before it is authorized to extend
4 their direct pay authority to repair contractors in lieu of
5 tax, and

6 3. the business entity must rescind the direct
7 pay authority on January 1 of each year and must advise its
8 repair contractors of such rescission until the business
9 entity can demonstrate that it has paid the \$100,000 in tax
10 for the calendar year involved.

11 a. In lieu of this procedure the business entity may
12 elect to pay the \$100,000 in tax direct to the Department of
13 Revenue on January 1 of each calendar year and leave in
14 force the direct pay authority extended to its repair
15 contractors.

16 (h) Definitions - The following terms and phrases when
17 used in this rule shall have the meaning or usage ascribed
18 to them as follows, except where the context clearly
19 indicates a different meaning or usage:

20 1. "Fixed location" shall mean the state of being
21 permanently affixed to one location or plant site, or any
22 portable plant which may be set up for a period of not less
23 than six months in a stationary manner so as to perform the
24 same industrial manufacturing, processing, compounding, or
25 production process that could be performed at a permanent
26 location or plant site.

27 2. "Production Process" shall begin at the time
28 raw materials are delivered on the property of the new or
29 expanding facility and end after the product has been
30 manufactured, processed, compounded, produced, fabricated or
31 prepared for shipment for sale.

32 (i) Services performed on machinery and equipment which
33 may qualify for exemption.

34 1. For the purpose of this exemption industrial
35 machinery and equipment shall:

1 a. include special foundations for the
2 support of qualifying machinery and equipment; and

3 b. include electrical wiring from the power
4 panel box to the qualifying machinery and equipment.

5 2. Generally, the exemption for services
6 performed on industrial machinery and equipment ends when
7 the product produced is prepared for shipment for sale.

8 3. Services performed on quality control
9 equipment installed within the production line as a part of
10 the production activity and required to be performed on each
11 item or article produced before the item or article can be
12 sold qualify for the exemption.

13 4. Services performed for preproduction, random
14 or postproduction quality control equipment which do not
15 qualify as industrial machinery and equipment are taxable.

16 5. Services performed on machinery and equipment
17 used predominately to remove waste materials from industrial
18 machinery and equipment where the removal is required to
19 maintain the operation of the machinery and equipment may
20 also qualify for this exemption.

21 6. Services performed on conveyors or related
22 equipment used to transport raw materials from the storage
23 area to the production line qualify for this exemption.

24 7. Services performed on computers used
25 exclusively to direct and control the functions of exempt
26 industrial machinery and equipment may qualify as exempt.
27 However, if the same computer or any part thereof is used to
28 perform bookkeeping, accounting, sales reports, etc.,
29 services performed on the computer shall be fully taxable,
30 without proration on account of use.

31 (j) Where any parts are purchased and used by the
32 repairman in providing a service for the maintaining,
33 retrofitting, repairing or replacing of industrial machinery
34 and equipment, the total charge for such service shall be
35 subject to tax.

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(k) For the purposes of this rule any service performed on or to real property shall be subject to the tax without regard to the tax limitation set forth herein.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 3, 5, 7, 12 and 13, Chapter 87-6, Laws of Florida.
History - New 7-1-87.

2
3 12-ER-87-57 **Medical Exemptions.**

4
5 (1)(a) Sales, rentals, and repair services of
6 orthopedic shoes are exempt from tax. For purposes of this
7 exemption, an orthopedic shoe is one needed by an individual
8 to alleviate the malfunction of any part of the body or to
9 assist any disabled person in leading a normal life by
10 facilitating such individual's mobility.

11 (b) To be exempt, there must be a demonstration of a
12 bona fide need for the orthopedic shoe by either:

13 1. A prescription written by a person authorized by law
14 to prescribe medicinal drugs or other health aids; or

15 2. A statement dated and signed both by the individual
16 to whom the shoe was sold or rented, or for whom the repair
17 is performed and by the seller, lessor, or repairer of the
18 shoe describing the physical condition for which the
19 orthopedic shoe is needed and the special features of the
20 shoe qualifying it as an orthopedic shoe. This statement
21 must be maintained in the seller's or repairer's records to
22 evidence the exempt sale.

23 (2) Effective July 1, 1987, feminine hygiene products
24 including, but not limited to, sanitary panties, sanitary
25 belts, sanitary napkins, and tampons are taxable.

26 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
27 Chapter 87-6 Laws of Florida.

28 Law Implemented Section 5, Chapter 86-166 and Section 14,
29 Chapter 87-6, Laws of Florida.

30 History - New 7-1-87.
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2
3 12-ER-87-58 Aircraft, Boats, and Motor Vehicles.

4 (1) The exemption for boats sold by or through a
5 registered dealer to a purchaser who removes such boat from
6 this state within 10 days after the date of sale or, when
7 the boat is repaired or altered, within 10 days after
8 completion of such repairs and alterations, as authorized
9 pursuant to s. 212.05(1)(a)2., F.S., is reenacted, see Rule
10 12A-1.007(1)(c)). Effective July 1, 1987, the exemption is
11 also applicable to the sale of aircraft.

12 (2) The tax applies to all sales of aircraft in this
13 state unless the selling dealer is the holder of a valid
14 dealer's Certificate of Registration (DR-11) which
15 authorizes the dealer to sell aircraft and the sale is made
16 under the following conditions:

17 (a) The purchaser removes such aircraft from this state
18 within 10 days after the date of purchase. It shall be the
19 duty of the dealer who sells the aircraft to obtain from the
20 purchaser, and retain in his records, written proof that the
21 aircraft was in fact removed from this state within the
22 10-day time limit specified in this subsection. Invoices
23 for fuel, tie-down charges or hangar charges issued by
24 out-of-state vendors which specifically identify the
25 aircraft, including the FAA registration number, will
26 provide evidence that the aircraft was removed from Florida
27 within the 10 day period and will be acceptable proof for
28 purposes of this rule;

29 (b) The aircraft is altered or repaired after the sale
30 and the purchaser removes such aircraft from this state
31 within 10 days after completion of repairs or alterations.
32 In no event shall the aircraft remain in this state more
33 than 90 days after date of purchase. When the aircraft is
34 altered or repaired, whether by the dealer who sold the
35 aircraft or by a repair facility registered with the
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1 Department of Revenue, it shall be the selling dealer's or
2 the repairing dealer's responsibility to obtain from the
3 purchaser written proof as specified in paragraph (a) of
4 this subsection that the aircraft was in fact removed from
5 this state within the 10-day time limit specified in this
6 rule;

7 (c) Provided that in either paragraphs (a) or (b)
8 above, the dealer obtains from the purchaser within 90 days
9 from the date of sale written proof that the purchaser
10 licensed, registered, or documented the aircraft outside
11 this state; and,

12 (d) The selling dealer obtains from the purchaser, and
13 makes it a permanent part of his records, an affidavit,
14 executed at the time of sale, in which the purchaser attests
15 to the fact that he has read the statute, states the
16 specific reason for claiming exemption, that he will remove
17 the aircraft from this state within the time limit set in
18 this rule, that no use will be made of the aircraft in this
19 state other than to expeditiously move the aircraft from the
20 point of delivery to the repair facility and that the
21 aircraft will be removed from this state within 10 days
22 after completion of the repairs or alterations. The
23 following is a suggested affidavit to be completed by the
24 purchaser and presented to the seller:

25 Suggested form of affidavit:

26 AFFIDAVIT FOR EXEMPTION OF AIRCRAFT SOLD
27 FOR REMOVAL FROM THE STATE OF FLORIDA BY THE
28 PURCHASER

29 STATE OF FLORIDA) AFFIDAVIT
30 COUNTY OF _____)
31

32 Personally appears the below named affiant, who being duly
33 sworn, deposes that he has read section 212.05, F.S., and
34 the Florida Department of Revenue's rule and claims
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exemption under the rule from Florida sales and use tax on
the purchase of the aircraft designated below for the
following reason:

Name of Purchaser _____

Purchaser's Permanent

Address _____

(Street) (City) (State)

Name of Selling Dealer _____

Address of Selling Dealer _____

(State) (Street) (City)

Selling Dealer's Florida

Sales and Use Tax

Registration Number _____

Date of Sale _____

(Month) (Day) (Year)

DESCRIPTION OF AIRCRAFT

Make _____ Model _____ Year _____

Serial

No. _____ New _____ Used _____

Engine

Number(s) _____

Name, State Registration, or Aircraft,

U.S. Department of Transportation Identification Number

N _____

Sales Price _____ Trade-In Allowance _____ Net Amount

Paid _____

() Aircraft will be removed by me or by my designated
agent from the State of Florida within 10 days of date of
purchase.

() Aircraft is to be repaired or altered and will be
removed from the State of Florida by me or by my designated
agent within 10 days after completion of the repairs or

1 alterations consistent with Chapter 212.05, Florida
2 Statutes.

3
4 _____
5 (Signature of
6 Purchaser)

7 Sworn to and subscribed before me
8 this _____ day of _____, 19__.

9
10 _____
11 (Notary Public for Florida)

12
13 Original to be retained by selling dealer
14 1st copy to be submitted with Sales Tax Return
15 2nd copy Purchaser's copy
16

17 (e) The sale of an aircraft by any "person," as
18 defined in Section 212.02(17), Florida Statutes, who does
19 not hold a valid vehicle dealer's certificate of
20 registration issued by the Florida Department of Revenue is
21 not exempt from the tax and the Department may proceed
22 against the purchaser for the collection of the tax.

23 (f) In the event that the selling dealer shall fail to
24 obtain or the purchaser shall fail to furnish the dealer
25 with the documents required under this rule, the Department
26 may proceed against either the dealer, the purchaser, or
27 both for payment of the tax.

28 (g) Any purchaser who claims exemption from payment of
29 the tax under this rule and who fails to remove his aircraft
30 from this state within the time limits specified in this
31 rule, or who permits the aircraft to return to this state
32 within 6 months from the date of departure from this state,
33 shall be liable for payment of the tax, plus interest and
34 the mandatory penalty equal to the tax, which penalty is in
35 lieu of the penalty provided in Section 212.12(2), Florida
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Statutes.

(h) Notwithstanding the above provisions of this rule, the owner of a aircraft may permit his aircraft to be returned to this state for warranty repairs within 6 months from the date of departure without being in violation of the law and without incurring liability for payment of tax or penalty on the purchase price of the aircraft; provided, that he removes the aircraft from this state within 10 days of the completion of the warranty repairs and can prove that he did so by invoices for fuel, tie-down or hangar charges issued by out-of-state vendors or suppliers which specifically identify the aircraft and which are dated within 10 days after completion of said repairs.

(4) The charge for an auto wash job, in which nothing is added to the water except a detergent or water softener, is subject to tax beginning July 1, 1987. When silcones, or any other substances are added that forms a protective film, the charge for the entire job is subject to tax.

(5)(a) Effective July 1, 1987, the provisions which allow motor vehicle operators owners/lessors the option of paying the tax up front on long term leases (12 months or more) when the lease is to one lessee or collecting the tax on the lease payments have been repealed, except as indicated in paragraph (c) below.

(b) The purchase of motor vehicles exclusively for rental purposes may be made tax exempt when the purchaser/lessor issues a resale certificate to the dealer at the time of purchase in lieu of paying tax. The lessor shall collect tax from his customers on the total rental charge.

(c)1. In the case of commercial motor vehicles which are self propelled or towed and used on the public highways in commerce to transport persons or cargo having a gross weight of 10,000 pounds or more, when the term of the lease or rental to any lessee is for a period of 12 months or

1 more, the owner/lessor may pay the Florida tax on the
2 acquisition of the motor vehicle. In such cases, the rental
3 to the initial lessee and renewals thereof to the same
4 lessee are not subject to the rental tax. The rental of the
5 same commercial motor vehicle to subsequent lessees by the
6 owner/lessor is taxable.

7 2. When the owner/lessor who is not subject to the
8 exemption provided in (5)(c)1. above has exercised the
9 option of paying the tax up front on the acquisition of any
10 motor vehicle and has entered into a long term contract with
11 a lessee prior to July 1, 1987, then the owner/lessor may
12 continue with that option for the duration of that contract.
13 However, lease payments on any new contract or renewal of
14 the existing contract, will be subject to tax and the
15 owner/lessor will not be entitled to a credit for the tax
16 paid on the acquisition of the leased motor vehicle.

17 (d) In all cases set out above, the subsequent sale of
18 the motor vehicle, by the owner/lessor is taxable except
19 when the vehicle is sold for resale.

20 (e) Subleases of leased motor vehicles are subject to
21 the tax.

22 (6) Effective July 1, 1987, the charge made by an air
23 taxi (charter) to transport a passenger to a certain
24 destination (the passenger does not pilot or take possession
25 of the airplane) is a taxable service. The purchase of an
26 airplane for such use is taxable.

27 (7) Effective July 1, 1987, the charge for flight
28 instruction, which includes supervised solo flights is
29 taxable. The purchase of an airplane for this use is
30 taxable.

31 (8) Effective July 1, 1987, wrecker towing charges
32 are taxable, even if the charge is separately stated on the
33 customer's invoice. (See Rule 12-ER-87-11(47) for emergency
34 road services)

1 Specific Authority 212.17(6). 212.18(2) F.S.; Section 33,
2 Chapter 87-6 Laws of Florida.
3 Law Implemented Sections 1, 10 and 14, Chapter 87-6, Laws of
4 Florida.
5 History - New 7-1-87.

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3 12-ER-87-59 Sales, Installation Charges.

4 "Sales price" means the total amount paid for
5 tangible personal property, or services, including any
6 services that are a part of the sale, and tangible personal
7 property that is part of the service, valued in money,
8 whether paid in money or otherwise, and includes any amount
9 for which credit is given to the purchaser by the seller,
10 without any deduction therefrom on account of the cost of the
11 property sold, the cost of materials used, labor or service
12 costs, interest charged, losses, or any other expense
13 whatsoever. "Sales price" also includes the consideration
14 for a transaction which requires labor or material to alter,
15 remodel, maintain, adjust or repair tangible personal
16 property. Trade-ins or discounts allowed and taken at the
17 time of sale shall not be included within the purview of
18 this rule.

19 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
20 Chapter 87-6 Laws of Florida.

21 Law Implemented Sections 5 and 7, Chapter 87-6, Laws of
22 Florida.

23 History - New 7-1-87.
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2
3 12-ER-87-60 Finance and Interest Charges and Carrying
4 Charges on Installment Sales.

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6 (1) The amount paid by any purchaser as interest or as
7 a finance charge is taxable as part of the sale price of the
8 property, unless such interest or finance charge is
9 separately stated from the consideration received for the
10 tangible personal property transferred in a retail sale.
11 For example, where articles are sold in a taxable
12 transaction under an installment payment arrangement, retail
13 retained title contract or purchase money mortgage for a
14 stated amount payable in installments, the entire amount is
15 taxable as part of the sale price of the property. If, on
16 the other hand, a cash selling price is stated and interest
17 and carrying charges are added thereto as separate and
18 distinct items, only the cash selling price is taxable as
19 part of the sale price of the property.

20 (2) Late fees in the nature of a penalty, if separately
21 stated, are not taxable.

22 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33.

23 Chapter 87-6 Laws of Florida.

24 Law Implemented Sections 1, 2 and 3, Chapter 87-6, Laws of
25 Florida.

26 History New 7-1-87.

2
3 12 ER 87-61 **Fabrication of Tangible Personal Property**
4 **for Others.**

5 (1) Charges by dealers including, but not limited to,
6 labor, replacements, materials and supplies to adjust,
7 apply, alter, install, maintain, remodel or repair tangible
8 personal property belonging to others are fully taxable.

9 (2) Charges by dealers to sandblast tangible personal
10 property belonging to others are fully taxable.

11 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
12 Chapter 87-6 Laws of Florida.

13 Law Implemented Sections 1, 2 and 12, Chapter 87-6, Laws of
14 Florida.

15 History New 7-1-87.

2
3 **12-ER-87-62 Monuments and Tombstones.**

4 (1) The building of a mausoleum is the construction of
5 real property, and the builder is the consumer of the
6 materials and supplies used in the construction and is
7 responsible for remitting the tax on such materials and
8 supplies. Effective July 1, 1987, the builder is a dealer
9 with reference to the sale or use of his services, see
10 12-ER-87-31.

11 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
12 Chapter 87-6 Laws of Florida.

13 Law Implemented Sections 1 and 7, Chapter 87-6, Laws of
14 Florida.

15 History - New 7-1-87.
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3 12-ER 87-63 **Sales to Persons Engaged in Printing.**

4 ~~(1)~~ Photo and news services are exempt through June
5 30, 1987, but are taxable beginning July 1, 1987, see
6 12-ER 87-11. Provided however that photographic services
7 performed directly in connection with the production of
8 qualified motion pictures are exempt, see 12-ER-87-11(16).
9
10 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
11 Chapter 87-6 Laws of Florida.
12 Law Implemented Sections 1 and 7, Chapter 87-6, Laws of
13 Florida.
14 History New 7-1-87.

2
3 12-ER-87-64 **Funerals.**

4 (1) When an auto rental corporation rents private cars,
5 station wagons or other motor vehicles to funeral homes on a
6 monthly charge and funeral homes provide their own drivers,
7 the transaction is a lease of tangible personal property and
8 is taxable.

9 (2) When an auto renting company rents hearses to
10 funeral homes for funerals and supplies the driver, the
11 renting company is performing a service that is exempt from
12 tax.

13 (3) The charge by a funeral home for ambulance service
14 is exempt.

15 (4) If a rental company furnishes a motor vehicle,
16 including a limousine, with driver to another rental concern
17 which in turn furnishes the vehicle and driver to a funeral
18 home, the charge is for a service and is taxable, unless the
19 second rental concern furnishes the first rental company a
20 resale service purchase permit, see 12-ER-87-45.

21 (5) Services for funerals, such as those provided by
22 the funeral director, musician or clergy, even though
23 compensated, are exempt.

24 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,

25 Chapter 87-6 Laws of Florida.

26 Law Implemented 212.08(2)(a), F.S.; Sections 3 and 14.

27 Chapter 87-6, Laws of Florida.

28 History - New 7-1-87.

2
3 12-ER-87 65 Furniture and Storage Warehousemen.

4 (1)~~(a)~~ Warehousemen customarily engaged in the
5 business of renting space for storing tangible personal
6 property belonging to other persons are subject to the tax
7 on rentals and the gross proceeds derived therefrom are
8 taxable, ~~except as provided in 12-ER-87-11(4)~~. However,
9 where a warehouseman stores such property as a bailment, it
10 is an exempt service.

11 (2)~~b~~ The sale of crating, boxing, packaging and
12 packing materials for use by a warehouseman in renting such
13 space or in the performance of a warehouse bailment service
14 is taxable, and the seller of such materials to a
15 warehouseman shall collect and remit tax on such sales.

16 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
17 Chapter 87-6 Laws of Florida.

18 Law Implemented Sections 3, 7 and 8, Chapter 87-6, Laws of
19 Florida.

20 History - New 7-1-87.
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3 12-ER-87-66 Sales of Containers, Wrapping and Packing
4 Materials and Related Products.

5 (1) Sales of materials, containers, labels, sacks, or
6 bags intended to be used one time only for packaging
7 tangible personal property for sale, or for packaging used
8 in providing a taxable service are exempt. However, sales
9 of packaging used in providing an exempt service are
10 taxable.

11 (2) The purchase of crating, boxing, packaging and
12 packing materials for use by a warehouseman in renting
13 warehouse space or in the performance of warehouse bailment
14 services is taxable. The seller of such materials shall
15 collect and remit tax on such sales.

16 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33.
17 Chapter 87-6 Laws of Florida.

18 Law Implemented Sections 212.02(19)(a)4. F.S., as created
19 by Section 7, Chapter 87-6, Laws of Florida.

20 History - New 7-1-87.
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3 12-ER-87-67 Sales by Photographers, Photofinishers
4 and Photostat Producers, Photoengravers and Wood Engravers.

5 (1) Total fees charged_L including both sitting fees
6 and photographs_L by photographers are taxable.

7 (2) Total fees charged by architects_L including
8 charges for professional services and for blueprints,
9 models, and other tangible personal property_L are taxable.

10 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
11 Chapter 87-6 Laws of Florida.

12 Law Implemented Section 1, Chapter 87 6, Laws of Florida.

13 History New 7 1-87.
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DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

12-ER-87-68 **Valet Service.**

The total charge made by a hotel or motel to customers for cleaning, laundry and garment services are taxable including any valet or other service charges. Effective July 1, 1987, cleaning, laundry and garment services cannot be purchased for resale tax exempt unless the provisions of 12-ER-87-4 are met.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.
Law Implemented Sections 1, 3 and 7, Chapter 87-6, Laws of Florida.
History New 7 1 87.

2
3 12-ER 87-69 **Manufacturing.**

4 (1) Fabrication labor shall not be taxable when a
5 person is using his own equipment and his own personnel, for
6 his use, as a producer, subproducer, or coproducer of a
7 qualified motion picture prepared for showing on the screens
8 or through television, theatrical, commercial, advertising,
9 or educational purposes. See 12-ER 87-~~11~~12(16).

10 (b) "Qualified motion picture" means all or any part of
11 a series of related images, either on film, tape or other
12 embodiment, including, but not limited to, all items
13 comprising part of the original work and film-related
14 products derived therefrom as well as duplicates and prints
15 thereof and all sound recordings created to accompany a
16 motion picture, which is produced, adapted or altered for
17 exploitation in, on or through any medium or device and at
18 any location, primarily for entertainment, industrial or
19 educational purposes, see 12 ER-87-~~11~~12(16).

20 (2) In regard to the manufacturing and sale of factory
21 built buildings, see 12-ER 87-31.

22 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
23 Chapter 87-6 Laws of Florida.

24 Law Implemented Sections 3, 5 and 12, Chapter 87-6, Laws of
25 Florida.

26 History - New 7-1-87.
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DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

12-ER-87-70 Florists.

(1) Any service provided by a florist for compensation, such as consultation in planning decorations for special events, is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

2
3 12-ER-87-71 Sale of Agricultural Products, ~~including~~
4 ~~Poultry and Livestock.~~

5 (1)(a) The term "ornamental nursery stock" applies to
6 all plants, shrubs and trees customarily sold by nurseries
7 for landscaping purposes and includes plants, shrubs and
8 trees that may bear ~~edible~~ nuts, fruits and berries;
9 provided however, that such term shall not include plants,
10 trees or shrubs sold to a commercial farmer for use on his
11 own farm in producing a crop for sale.

12 (b) The sale of ornamental nursery stock by the
13 producer to anyone for any purpose other than resale is
14 subject to the tax. All sales of ornamental nursery stock
15 will be presumed to be retail sales and subject to the tax,
16 unless the seller shall have obtained a resale certificate
17 from his customer in accordance with the provisions
18 contained in ~~the Florida Department of Revenue~~ Rule
19 12A-1.038 and Rule 12A-1.039 or, in the case of an
20 out-of-state dealer, an affidavit in accordance with the
21 provisions contained in Rule 12A-1.064(23).

22 Example: The sale by the producer of ornamental nursery
23 stock (regardless of ~~state~~ of growth or maturity) to a
24 broker, wholesaler or retailer will be regarded as a retail
25 sale and taxable unless the purchaser furnishes the seller
26 with a resale certificate or affidavit as provided
27 hereinabove.

28 (c) A landscape contractor who purchases ornamental
29 nursery stock to fulfill a lump sum, cost plus, fixed fee or
30 guaranteed price contract for the improvement of realty is
31 construed to be the consumer of such nursery stock and he is
32 liable for the sales tax at the time of purchase. A person
33 who fulfills a contract as above described should not
34 collect the tax as such from his customer because the tax
35 should be paid by the landscaper on all materials used in
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1 fulfilling the contract. A landscaper who produces his own
2 ornamental nursery stock or who obtains stock that he
3 acquired without cost, such as by digging up wild plants in
4 the woods, is not liable for the tax on such stock which he
5 uses in fulfilling the aforesaid types of contracts. As to
6 taxability of services of a landscape contractor on and
7 after July 1, 1987, see 12-ER-87-31.

8 (d) A person who agrees by contract to sell
9 specifically described and itemized materials and supplies
10 at an agreed price or at the regular retail price and to
11 complete the work either for an additional agreed price or
12 on the basis of time consumed is deemed to be selling
13 tangible personal property (ornamental nursery stock) at an
14 agreed retail price and shall collect sales tax from his
15 purchaser based upon the amount of the receipts from such
16 sales, excluding installation charges if separately stated
17 and if the sale is before July 1, 1987, see 12-ER-87-31.
18 Sales tax applies even though all or part of the ornamental
19 nursery stock is grown or obtained from its natural habitat
20 for no consideration by the person completing the contract.

21 (e) Plants, shrubs, trees and other items of tangible
22 personal property that a nurseryman donates in the course of
23 his business to any person or organization shall be taxed at
24 its cost. No tax is due on items donated which the
25 nurseryman produces or acquires from its natural habitat
26 without cost.

27 (2) Services for compensation of landscape architects,
28 landscape contractors, and lawn care professionals and
29 subprofessionals are exempt through June 30, 1987, but are
30 taxable beginning July 1, 1987. See 12-ER-87-22 and
31 12-ER-87-31.

32 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
33 Chapter 87-6 Laws of Florida.
34 Law Implemented Sections 3, 5 and 7, Chapter 87-6, Laws of
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Florida.
History - New 7-1-87.

2
3 12-ER-87-72 Sales to or by Contractors Who Repair,
4 Alter, Improve and Construct Real Property.

5 (1) Such contractors may include, among others,
6 building, electrical, plumbing, heating, painting,
7 decorating, ventilating, paper hanging, sheet metal, bridge,
8 road, landscape or roofing contractors and they may use one
9 of the following methods in arriving at the total contract
10 price:

11 (a) Contracts in which the contractor or subcontractor
12 agrees to furnish materials and supplies and necessary
13 services for a lump sum;

14 (b) Contracts in which the contractor or subcontractor
15 agrees to furnish the materials and supplies and necessary
16 services on a cost plus or fixed fee basis;

17 (c) Contracts in which the contractor or subcontractor
18 agrees to furnish materials and supplies and necessary
19 services with an upset or guaranteed price which may not be
20 exceeded; and

21 (d)1. Contracts in which the contractor or subcontractor
22 repairs, alters, improves or constructs real property and
23 wherein he agrees to sell specifically described and
24 itemized materials and supplies at an agreed price or at the
25 regular retail price and to complete the work either for an
26 additional agreed price or on the basis of time consumed.

27 2. When a contractor or subcontractor uses materials
28 and supplies in fulfilling either a lump sum, cost plus,
29 fixed fee, guaranteed price or any kind of contract except
30 one falling in class (d) above, he becomes the ultimate
31 consumer thereof. The person or dealer who sells such
32 materials and supplies to such contractor or subcontractor
33 is making sales at retail and is required to collect the tax
34 from him based upon the receipts from such sales.

35 3. For ~~in~~ transactions before July 1, 1987, in cases
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1 falling in class (d) above, the contractor or subcontractor
2 is deemed to be selling tangible personal property at an
3 agreed retail price and shall collect tax from his purchaser
4 based upon the amount of the receipts from such sales,
5 excluding installation charges if separately stated. A
6 dealer selling to such contractor or subcontractor must
7 obtain a resale certificate in lieu of tax.

8 4. ~~For~~ transactions on and after July 1, 1987,
9 contractors improving real property are considered the
10 consumer of materials they purchase in every instance, and
11 the installation and other services of contractors are
12 taxable whether separately stated or not, see 12-ER-87-31.

13 5. Contractors, manufacturers or dealers who sell and
14 install items of tangible personal property enumerated in
15 Rule 12A-1.016, F.A.C., must collect tax on the full selling
16 price, including any installation or other charges, even
17 though such charges may be separately stated, even though
18 the transaction occurred before July 1, 1987.

19 (2)(a) Contractors who operate manufacturing plants
20 which make items of tangible personal property for their own
21 consumption and use in the performance of contracts for the
22 construction or improvement of real property are subject to
23 tax upon the manufactured cost of such items. This includes
24 the cost of all materials as well as the cost of labor,
25 power, transportation, and other plant expenses.

26 (b) Fabrication labor incurred at the job site in the
27 performance of repairing, altering, improving, or
28 constructing real property is not subject to tax through
29 June 30, 1987. Effective July 1, 1987, such labor is
30 subject to tax, see 12-ER-87-31. For the purpose of this
31 rule, "job site" means a temporary site where fabrication is
32 performed for a specific job. This site becomes a permanent
33 manufacturing plant site when fabrication is performed for
34 any job other than the specific job for which the site was
35 selected.

1 (3) Fallout shelters are improvements to realty. The
2 materials are taxable to lump sum, cost plus, fixed fee or
3 guaranteed price contracts.

4 (a) Where a unit is sold as a retail transaction, tax
5 is to be paid by the purchaser to the dealer. In such
6 cases, installation labor is exempt if separately stated
7 through June 30, 1987, see 12-ER-87-31.

8 (b) If the exempt items in survival kits can be
9 accurately separated as to the selling price, they are
10 exempt. otherwise, the total selling price of the kit is
11 taxable.

12 (4) A septic tank manufacturer who enters into a
13 contract to furnish and install a tank qualified under Rule
14 12A-1.051, F.A.C., as the consumer of the materials he uses
15 in manufacturing the tank, but he must pay tax on the
16 fabricated product. It has been determined that 60% of the
17 installed price is a fair taxable basis. This applies to a
18 new installation which includes a drain field. On drain
19 field replacements, it is estimated that costs of materials
20 approximate one-third of the total charge. For transaction
21 occurring before July 1, 1987, the percentage of the
22 installed contract price above the percentage is exempt.
23 For transactions after that date, the provisions of
24 12-ER-87-31 shall apply.

25 (5) Glass dealers who enter into lump sum contracts to
26 furnish and install window glass in buildings may operate
27 under Rule 12A-1.051, F.A.C., and pay tax to their suppliers
28 on the glass, putty and other materials used in the
29 performance of such contracts; or they may charge the
30 customer tax on 60% of the contract price to cover the sales
31 price of the materials. For transactions occurring before
32 July 1, 1987, the remaining 40% of the contract is exempt.
33 For transactions after that date, the provisions of
34 12-ER-87-31 shall apply.

35 (6) If glass is cut and sold as a finished product, the
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1 cost of labor is part of the sales price and is taxable.
2 Installation labor charges are exempt before July 1, 1987,
3 but only if the article becomes a part of realty. On and
4 after July 1, 1987, there is no exemption for such
5 compensated services, see 12-ER-87-31.

6 (7) The charge made by a sign company for
7 advertisements appearing on any of the type signs referred
8 to in paragraphs (23), (24) and (25) of Rule 12A-1.051,
9 F.A.C., is exempt through June 30, 1987, but is taxable
10 beginning July 1, 1987, see 12-ER-87-31.

11 (8) An awning which is sold and attached to realty by
12 the seller loses its identity as tangible personal property
13 and the installation labor charges are exempt if separately
14 stated through June 30, 1987. Effective July 1, 1987, such
15 labor charges are taxable, see 12-ER-87-31.

16 (9)(a) When a contractor pursuant to a contract to
17 deepen channels or harbors hydraulically pumps the dirt on
18 to spoil areas he is not deemed to be selling fill dirt;
19 charge is for moving the material from one location to
20 another and is exempt through June 30, 1987, but is taxable
21 effective July 1, 1987, see 12-ER-87-31.

22 (b) When a contractor enters into a contract to fill
23 using materials, removed from state owned submerged land,
24 the taxable basis will be the cost of materials, fuel,
25 blasting, labor or other costs incurred by the contractor.

26 (10) Lump sum, cost plus, fixed fee or guaranteed price
27 contractors are the ultimate consumers of ice machines which
28 are attached to and become a part of realty and should pay
29 tax to their vendors on the purchases of such machines. (See
30 Rule 12A-1.016, F.A.C., for taxable status of portable ice
31 machines.) However, effective July 1, 1987, the ultimate
32 consumer of the contractor's services for purposes of
33 determining taxability of the services depends on whether
34 the construction is new construction or construction, other
35 than new construction, see 12-ER-87-31.

1 (11) The charge made by a contractor for the
2 furnishing, installation and subsequent removal of forms and
3 related equipment used to hold and shape concrete on the job
4 and for the construction of items such as floor slabs,
5 joists, lintels, beams and columns is a charge for services
6 rather than a rental of tangible personal property and is
7 exempt through June 30, 1987. Effective July 1, 1987, such
8 charge is taxable, see 12-ER-87-31. The contractor is
9 liable for tax on his cost of all equipment so used.

10 (12) The manufacture of factory-built buildings by
11 persons for their own use in the performance of contracts
12 for the construction or improvement of real property is
13 taxable, see 12-ER-87-31.

14 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
15 Chapter 87-6 Laws of Florida.
16 Law Implemented Section 5, Chapter 87-6, Laws of Florida.
17 History - New 7-1-87.

2 12-ER-87-73 Cemetery Organizations.

3 (1)(a) Cemetery organizations are dealers and must
4 procure dealers' certificates of registration and collect
5 the sales tax on sales of tangible personal property to the
6 ultimate consumer. When such organizations brick up graves
7 or construct foundations for monuments, etc., the provisions
8 of 12-ER-87-31 shall apply.

9 (b) Church cemeteries are exempt on their purchases.
10 Cross Reference Rule 12A-1.026, F.A.C.

11 (2) Effective July 1, 1987, cemetery management
12 services are taxable.

13 (3) Effective July 1, 1987, cemetery cleaning and
14 up-keep services are taxable.

15 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
16 Chapter 87-6 Laws of Florida.

17 Law Implemented Sections 5 and 7, Chapter 87-6, Laws of
18 Florida.

19 History - New 7-1-87.
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12-ER-87-74 **Trading Stamps.**

~~(1)~~ The amount charged by a trading stamp company to a dealer for the privilege of distributing trading stamps which are redeemable by the trading stamp company either in cash or premiums is taxable.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Section 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

2 12-ER-87-75 **Inspection Fees.**

3 ~~(1)~~ Effective July 1, 1987, the inspection fee charged
4 ~~and invoiced~~ by the seller on telephones and power lines is
5 taxable, regardless of whether such charge is made by an
6 independent inspector.

7
8 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
9 Chapter 87-6 Laws of Florida.

10 Law Implemented Section 1, 7 and 10, Chapter 87-6, Laws of
11 Florida.

12 History - New 7-1-87.

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2 12-ER-87-76 Sales in Interstate and Foreign Commerce.

3 (1) Railroads and motor vehicles which are licensed as
4 common carriers by the Interstate Commerce Commission
5 ~~and, aircraft which are licensed by the U.S. Department of~~
6 ~~Transportation,~~ vessels and parts thereof used to transport
7 persons or property in interstate or foreign commerce are
8 subject to tax on a pro rata basis as outlined in Rule
9 12A-1.064, F.A.C. This proration also applies to labor to
10 repair such, railroads, motor vehicles, ~~aircraft~~ and vessels
11 whether or not the labor is separately stated from the
12 parts.

13 (2) Transportation charges to transport property in
14 interstate or foreign commerce are taxable as a service to
15 the extent as outlined in 12-ER-87-34. The method used to
16 prorate the taxable service in Florida is separate and
17 distinct from the method used to calculate the tax on
18 railroad, motor vehicles, ~~aircraft,~~ vessels and parts
19 thereof.

20 (3) The lease, rental of railroad cars, and services
21 related thereto, to a railroad company for use on its track
22 is exempt, provided the rental charges are subject to
23 jurisdiction of the United States Interstate Commerce
24 Commission and are based on hourly, daily or mileage charges
25 are exempt. Effective July 1, 1987, charges made pursuant
26 to railroad car service agreements are also exempt.

27 (4)(a) Any air carrier required by the United States
28 Department of Transportation to keep records according to
29 said department's standard classification of accounting may
30 elect, upon the conditions prescribed in subparagraph (c),
31 to be subject to the tax imposed by this part on services
32 and tangible personal property according to the provisions
33 of this section.

34 (b) The basis of the tax shall be the ratio of Florida
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1 mileage to total mileage as determined pursuant to Part IV
2 of Chapter 214. The ratio shall be determined at the close
3 of the carrier's preceding fiscal year. The ratio shall be
4 applied each month to the carrier's total systemwide gross
5 purchases of tangible personal property and services
6 otherwise taxable in Florida.

7 (c) The election provided for in this subparagraph
8 shall not be allowed unless the purchaser makes a written
9 request, in a manner prescribed by the Department of
10 Revenue, to be taxed under the provisions of subparagraph
11 (6), and such person registers with the Department of
12 Revenue as a dealer and extends to his vendor at the time of
13 purchase, if required to do so, a certificate stating that
14 the item or items to be partially exempted are for the
15 exclusive use designated herein. Otherwise, all purchases
16 of taxable property and services purchased in this state
17 shall be subject to taxation.

18 (d) Any air carrier eligible for the election provided
19 in subparagraph (a) which does not so elect shall be subject
20 to the tax imposed by this part on the purchase or use of
21 services and tangible personal property purchased or used in
22 this state, as well as other taxes imposed herein.

23
24 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
25 Chapter 87-6 Laws of Florida.

26 Law Implemented 212.08(8)(9) F.S.; Sections 1, 2 and 7,

27 Chapter 87-6, Laws of Florida.

28 History - New 7-1-87.

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12-ER-87-77 **Auctioneers, Agents, Brokers and
Factors.**

~~(1)~~ Effective July 1, 1987, the charge made by an
auctioneer, agent, broker or factor for performing or
providing a service is taxable except as provided in
12-ER-87-11(12).

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 7, Chapter 87-6, Laws of
Florida.

History - New 7-1-87.

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3 12-ER-87-78 Real Property.

4 (1)(a) Every Any person who rents or leases any real
5 property or who grants a license to use, occupy or enter
6 upon any real property is exercising a taxable privilege
7 unless such real property is:

8 ~~(b) Effective July 1, 1986, any person who grants a~~
9 ~~license to use, occupy or enter upon real property is~~
10 ~~exercising a taxable privilege.~~

11 ~~(c) "Real Property" means any interest in the surface~~
12 ~~of real property unless the property is:~~

13 1. Assessed as agricultural property under Section
14 193.461, F.S.

15 2. Used exclusively as dwelling units.

16 3. Property subject to tax on parking, docking or
17 storage space under Section 212.03(6), F.S.

18 4. Effective July 1, 1986, a public or private street
19 or right-of-way occupied or used by a utility.

20 5. Effective July 1, 1986, a public street or road
21 which is used for transportation purposes.

22 6. Property used at an airport exclusively for the
23 purpose of aircraft landing or aircraft taxiing or property
24 used by an airline for the purpose of loading or unloading
25 passengers or property onto or from aircraft or for fueling
26 aircraft.

27 7. Property used at a port authority as defined in s.
28 315.02(2), F.S., exclusively for the purpose of oceangoing
29 vessels or tugs docking, or such vessels mooring on property
30 used by a port authority for the purpose of loading or
31 unloading passengers or cargo onto or from such vessels, or
32 property used at a port authority for fueling such vessels.

33 8. Effective July 1, 1987, property used as an
34 integral part of the performance of qualified motion picture
35 production services as defined in s. 212.0592(18)(a).

1 9. Effective July 1, 1987, property leased, subleased,
2 or rented to a person providing food and drink
3 concessionaire services within the premises of ~~an airport~~, a
4 movie theater, a business operated under a permit issued
5 pursuant to Chapter 550, F.S., (dog and horse racing), a
6 business operated under a permit issued pursuant to Chapter
7 551, F.S., (Frontons), or any publicly owned arena, sports
8 stadium, convention hall, ~~or exhibition hall~~, auditorium, or
9 recreational facility.

10 (10) A person providing retail concessionaire services
11 involving the sale of food and drink or other tangible
12 personal property within the premises of an airport shall be
13 subject to tax on the rental of real property used for that
14 purpose, but shall not be subject to the tax on any license
15 to use the property. For purposes of this subparagraph, the
16 term "sale" shall not include the leasing of tangible
17 personal property.

18 11. Recreational property or other common elements of a
19 condominium that is subject to a lease between the developer
20 or owner of the condominium complex and the condominium
21 association, in its own right or as the agent of the owners
22 of individual condominium units. This exemption applies
23 only to the lease payments and any other use of these
24 properties by either the owner, developer or the association
25 shall be fully subject to tax under Chapter 212.

26 (b) The provisions of this subsection relating to the
27 license to use, occupy or enter upon any real property are
28 effective July 1, 1986.

29 (2) The tenant, licensee, or person actually
30 occupying, using, or entitled to use any real property shall
31 pay the tax to his immediate landlord or such other person
32 granting the right to such tenant or licensee to occupy or
33 use such property.

34 (3)(a) The tax shall be paid at the rate of 5
35 percent by the tenant, lessee, or licensee on all
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1 considerations due and payable for the privilege of use,
2 occupancy, or the right to use or occupy any real property
3 for any purpose. Ad valorem taxes paid by the tenant,
4 lessee, or licensee to the landlord, lessor, or other person
5 granting a license for use of any real property or to anyone
6 else on behalf of the landlord or other person granting the
7 right to occupy or use such real property are taxable,
8 including transactions between affiliated entities.

9 (b) The license for use of any real property is
10 taxable, notwithstanding the fact the license arrangement
11 was entered into prior to July 1, 1986. Persons with
12 license arrangements in effect prior to July 1, 1986, which
13 provide for payment of the license fee to be made on or
14 after July 1, 1986, could not have avoided tax by
15 pre-paying, prior to July 1, 1986, those license fees
16 provided by the licensee arrangement to be paid on or after
17 July 1, 1986.

18 (4) Only one tax on rentals or license fees payable
19 shall be collected and the tax shall not be pyramided by a
20 succession of transactions. The amount of tax due the State
21 of Florida shall not be decreased by a succession of
22 transactions.

23 (5) Each place of business is required to be registered
24 separately by the owner, landlord, agent or person receiving
25 the rent or license fee, who is obligated to collect and
26 remit the tax.

27 (6)(a) Where a tenant or person occupying, using, or
28 entitled to use any real property which is subject to tax
29 sublets or assigns and collects rentals or licensee fees on
30 a taxable portion of the leased or licensed premises, such
31 tenant, licensee, or other person shall be required to
32 register as a dealer and collect and remit the tax on all
33 such sub-rentals or assignments.

34 (b) Notwithstanding the provisions of paragraph (a),
35 when space is subleased to a convention or industry trade
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1 show in a convention hall, exhibition hall, or auditorium,
2 whether public or privately owned, the sponsor who holds the
3 prime lease is subject to tax on the prime lease and the
4 sublease shall be exempt.

5 (7) When a tenant (lessee) or person occupying, using,
6 or entitled to use any real property (licensee) sublets or
7 assigns some portion of the leased or licensed property, he
8 may take credit on a pro rata basis for the tax that he paid
9 to his landlord or other such person on the space that he
10 subleases or assigns. Proration shall be computed on square
11 footage or some other basis acceptable to the Department of
12 Revenue. For example, "A" leases 200 square feet of floor
13 space for \$400 and pays his landlord \$20 rental tax. "A"
14 subleases 100 square feet, of the space to "B" for \$300 and
15 collects \$15 which he remits to the State, less a credit of
16 \$10 for tax that he paid to his landlord on the space that
17 he subleased to "B". (One half of \$400 is \$200 and 5
18 percent of this amount is \$10.)

19 (8) If a tenant or licensee sublets or assigns his
20 interest in all of the leased or licensed premises, or
21 retains only an incidental portion of the entire premises,
22 then such tenant or licensee may elect not to pay tax on the
23 prime lease or license provided that such tenant or other
24 person shall register as a dealer and collect and remit tax
25 due on the sub-rentals or assignments and pays the tax due
26 on the portion of the rental charges or license fees
27 pertaining to any taxable space which he retains. If the
28 tenant or licensee elects not to pay the tax to his
29 landlord, or other person granting the right to occupy or
30 use such real property, he should extend to his landlord or
31 such other person a resale certificate.

32 (9)(a) When the owner of a business, or the operator
33 of a business who is a lessee or licensee, provides floor
34 space to any person, and in addition thereto and in
35 connection therewith also provides certain services to such
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1 person such as display, delivery, wrapping, packaging,
2 telephone, credit, collection or accounting, the amount
3 charged by the lessee or licensee to such person constitutes
4 the lease or rental of or the license to use or occupy real
5 property, and where the charges for such services are not
6 separately stated in the agreement and on the invoices or
7 other billings, the total consideration paid under the
8 agreement is taxable. Where the charges for such services
9 are separately stated in the agreement and on the invoices
10 or other billings, only those charges for floor space are
11 taxable through June 30, 1987. When the operator of a
12 business is a lessee or licensee, he may take credit in
13 accordance with the provisions of subsection (7) of this
14 rule, for the tax paid on the floor space which he subleases
15 or assigns.

16 (b) Effective July 1, 1987, the total consideration for
17 performing or providing any service is taxable, unless the
18 service is specifically exempt, even if the fact the amount
19 of consideration charged for such services is separately
20 stated.

21 (10) When the operator of a business, who may be the
22 owner or prime lessee, provides space to an independent
23 operator or licensee and does not furnish the general
24 services enumerated in subsection (9) above, the operator
25 shall collect and remit tax on the total consideration paid
26 by the independent operator or licensee for the right of
27 such person to occupy or use such space.

28 (11)(a) When a tenant or licensee pays insurance for
29 his own protection, the premium is not regarded as rental or
30 a licensee fee consideration, even though the landlord or
31 other person granting the right to occupy or use such real
32 property is also protected by the coverage. However, any
33 portion of the premium which secures the protection of the
34 landlord or person granting the right to occupy or use such
35 real property and which is separately stated or itemized is
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1 regarded as rental or license fee consideration and is
2 taxable.

3 (b) Prior to July 1, 1987, when a lessor or person
4 receiving the rent or payment in and by a rental or license
5 fee arrangement with the lessee or other person paying the
6 rental or license fee, purchases utilities from a utility
7 company and merely serves as a conduit or pass through
8 between the utility company who furnishes the utilities and
9 the lessee or other such person who consume the utilities,
10 the reimbursement by the lessee or other such person does
11 not constitute a taxable consideration for the privilege of
12 use, occupancy, or the right to use or occupy real property
13 but is considered a service provided:

14 1. The utility charge is separately itemized on the
15 lessee's or licensee's bill and includes provision for sales
16 tax;

17 2. The cost of the utilities to the lessee or licensee
18 is directly proportional to its usage; and

19 3. The lessor or person receiving the rent or payment,
20 makes no profit on the utilities, rather the lessor is
21 merely reimbursed by the lessee or licensee for actual
22 utility consumption.

23 4. Effective July 1, 1987, such utility services are
24 taxable unless specifically exempt.

25 (12) When the rental or lease of an interest in real
26 property or a license to use or occupy any real property,
27 includes areas which are used for free parking the entire
28 consideration paid by the lessee or licensee to the lessor
29 or person receiving the rent or payment in and by a rental
30 or license fee arrangement is taxable.

31 (13) When a rental, lease, or license to use or occupy
32 real property involves multiple use of such real property
33 wherein a part of the real property is subject to tax, and a
34 part of the property is excluded from the tax, the Department
35 of Revenue shall determine from the lease or license and such
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1 other information as may be available, that portion of the
2 total rental charge or license fee which is exempt from the
3 tax. When, in the judgement of the Department, the amount of
4 rent or license fee stated in the lease or license fee
5 arrangement for the taxable portion of the real property does
6 not represent true value, the Department shall make a
7 determination of the proper amount of rent or license fee
8 applicable thereto for the purpose of determining the amount
9 of tax due from such other information as is available.

10 (14) The charge made to its customer by a railroad for
11 the use of a side track located on railroad property is
12 taxable.

13 (15) Any person who has leased, occupied, or used or was
14 entitled to use any real property and cannot prove that the
15 tax has been paid to his lessor or other person shall be
16 directly liable to the state for any tax, interest, or
17 penalty due on any such taxable transaction.

18 (16)(a) Prior to July 1, 1987, when a lessee or
19 licensee is required under the terms of his lease or license
20 fee arrangement to make payments to a merchants association
21 or to the lessor or other person receiving the rent or
22 payment, in and by the rental or license fee arrangement, to
23 be transmitted without deduction therefrom to a merchants
24 association, such payments are not rent and shall be exempt.
25 "Merchants association" means a corporation not for profit
26 organized and existing for the sole and exclusive purpose of
27 promoting the businesses of a group of merchants.

28 (b) Effective July 1, 1987, such payments to a
29 merchant's association by a lessee or licensee shall be
30 taxable if the payments are a part of the consideration for
31 the right to use or occupy the real property. If the payments
32 are not part of the consideration for the right to use or
33 occupy the real property such payments are not taxable, see
34 12-ER-87-33.

35 (17) The lease or rental of land or a hall or other
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1 facilities by a fair association subject to the provisions
2 of Chapter 616, F.S., to a show promoter or prime operator
3 of a carnival or midway attraction is exempt from tax.
4 However, the sublease of land, hall or other facilities by
5 the show promoter or prime operator of a carnival or midway
6 attraction is taxable.

7 (18) Effective October 1, 1986, the lease of
8 recreational property or the common elements of a
9 condominium between the developer or owner thereof and the
10 condominium association in its own right or as agent for the
11 owners of individual condominium units or the owners of
12 individual condominium units is not subject to tax.
13 However, only the lease payments on such property shall be
14 exempt from the tax, and any other use made by the owner or
15 the condominium association is fully taxable.

16 (19)(a) The lease or rental of real property or a
17 license fee arrangement to use or occupy real property
18 between related corporations is subject to tax.

19 (b) The total consideration, whether direct or
20 indirect, payments or credits, or other consideration in
21 kind, furnished by one corporation is subject to tax despite
22 the fact that one of the corporations may be a parent
23 corporation and the other a wholly-owned subsidiary.

24 (c) The total consideration furnished by one
25 corporation to a related corporation for the occupation of
26 the real property or the use or entitlement to use of real
27 property owned by the related corporation is subject to tax,
28 even though the amount of the consideration is equal to the
29 amount of the consideration legally necessary to amortize a
30 debt owned by the related corporation and secured by the
31 real property occupied, or used, and even though the
32 consideration is ultimately used to pay that debt. However,
33 such consideration is not rent but the payment of a debt if
34 the corporation furnishing the consideration is as equally
35 liable on the debt secured by the real property as the
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1 related corporation; any amount furnished to the related
2 corporation over the amount legally necessary to amortize
3 that debt is subject to tax unless specifically exempted by
4 statute.

5 (20)(a) When tangible personal property is left upon
6 another's premises under a contract of bailment, the bailee
7 is not exercising a privilege taxable under the provisions
8 of s. 212.031, F.S., relating to leases, licenses, or
9 rentals of real property.

10 (b) A bailment is a contractual agreement, oral or
11 written, whereby a person (the bailor) delivers tangible
12 personal property to another (the bailee) and the bailor for
13 the duration of the relationship relinquishes his exclusive
14 possession, control, and dominion over the property, so that
15 the bailee can exclude, within the limits of the agreement,
16 the possession of the property to that of all others. If
17 there is no such delivery and relinquishment of exclusive
18 possession, and the owner's control and dominion over the
19 property is not dependent upon the cooperation of the person
20 on whose premises the property is left, and his access
21 thereto is in no wise subject to the latter's control, it
22 will generally be held that such person is a tenant, lessee,
23 or licensee of the space upon the premises where the
24 property is left.

25 1. Example: A safety deposit box in a bank or vault
26 is a bailment, not a lease or license, because the bank has
27 one key and the customer another and both are necessary to
28 gain access to the box.

29 2. Example: An airport locker is not a bailment, but
30 a lease or license, because the renter has the key and sole
31 access to the stored property.

32 c. A person who merely grants storage space without
33 assuming, expressly or implied, any duty or responsibility
34 with the respect to the care and control of the property
35 stored is a landlord of a person granted a right to occupy
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1 or use such real property and is not a bailee. Thus, the
2 person granting the right to use such storage space is
3 exercising a privilege taxable under the provisions of s.
4 212.031, F.S., as a lease or license.

5 (d) A lease, license, or bailment is indicative of a
6 contractual relationship, and the terms are not mutually
7 exclusive. Whatever label is attached to a contract, in
8 determining whether a transaction is a bailment or a lease
9 or a license, consideration will be given to the manifested
10 intention of the parties as to which relationship has been
11 created.

12 (e) In the absence of an express contract, the creation
13 of a bailment requires that possession and control pass from
14 the bailor to the bailee; there must be full transfer,
15 actual or constructive, so as to exclude the property from
16 the possession of the owner and all other persons and give
17 the bailee sole custody and control for the time being.

18 (f) Effective July 1, 1987, a bailment is either
19 taxable or exempt depending upon whether the service of
20 which it is part is a taxable service.

21 Specific Authority 212.17(6), 212.18(2) FS; Section 33,
22 Chapter 87-6 Laws of Florida.

23 Law Implemented 212.02(6)(h), 212.031, 212.06(2)(j) FS;
24 Sections 7, 8 and 25, Chapter 87-6, Laws of Florida.

25 History - New 7-1-87.
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3 12-ER-87 79 **Rentals of Tangible Personal Property.**

4 (1) The lease, rental of railroad cars, and services
5 related thereto, to a railroad company for use on its track
6 is exempt, provided the rental charges are subject to
7 jurisdiction of the United States Interstate Commerce
8 Commission and are based on hourly, daily or mileage charges
9 are exempt. Effective July 1, 1987, charges made pursuant
10 to railroad car service agreements are also exempt.

11 (2) When the owner of equipment furnishes the operator
12 and all operating supplies, and contracts for their use to
13 perform certain work under his direction and according to
14 his customer's specifications, and the customer does not
15 take possession or have any direction or control over the
16 physical operation, the contract constitutes a service
17 transaction and not the rental of tangible personal
18 property, and the charge is exempt through June 30, 1987,
19 but is taxable beginning July 1, 1987.

20 (3) When a vessel is chartered with crew furnished, for
21 the purpose of transportation from one point to another and
22 the charterer does not have any direction or control over
23 its operation, the contract constitutes a service
24 transaction and not the rental of tangible personal property
25 and is exempt through June 30, 1987, but taxable beginning
26 July 1, 1987.

27 (4) When the owner of a vessel supplies the crew, which
28 remains under the control and direction of the owner, and
29 makes a charge measured on an admission or entrance or
30 length of stay aboard the vessel for the privilege of
31 participating in a sport or recreation, the charge is
32 taxable as an admission. When such charge before July 1,
33 1987 is for the privilege of fishing, it is exempt, but such
34 a charge on or after July 1, 1987 for the privilege of
35 fishing is taxable.

1 (5) When the owner of a float contracts with a second
2 party to furnish the driver and float in a parade for the
3 benefit of the second party, the charge made is considered a
4 charge for service and is exempt from tax through June 30,
5 1987, but effective July 1, 1987, such charge is taxable.
6 The owner is liable for tax on the materials he uses in the
7 construction of the float. If the owner of a float leases
8 it to a second party and surrenders possession to such
9 party, the rental charge is taxable.

10 (6)(a) A decorating contractor who uses materials and
11 supplies such as bunting, streamers, colored paper, wreaths,
12 pennants, lights, rope, etc., in fulfilling a contract which
13 requires the furnishing of arrangements and decorations to,
14 and their subsequent removal from, hotels, offices, public
15 buildings, etc., is the consumer of such materials and
16 supplies and shall pay tax on their acquisition. His charge
17 under such contract is subject to tax.

18 (b) The charge a contractor makes to his customer for
19 the rental of a flag kit containing a flag of the United
20 States or the official state flag of Florida which may
21 include flag poles, standards, etc., is exempt. The rental
22 of any related accessories, when not rented as part of a kit
23 containing a flag, is taxable.

24 (7) The revenue derived from coin operated lockers in
25 hotels, depots, etc., is taxable.

26 (8) The charge made for the use of frozen food lockers
27 in cold storage or locker plants under a bailment agreement
28 is exempt, see 12-ER-87-11(4)(d)1. and 12-ER-87-78(20). The
29 equipment used in these plants is taxable.

30 (9) The charge for water conditioning (soft water
31 service) is exempt through June 30, 1987, effective July 1,
32 1987 such charge is taxable when provided to a business, see
33 12-ER-87-24. The dealer shall pay tax on the acquisition of
34 tanks, minerals and other equipment used in furnishing such
35 service and the service is subject to tax.

1 (10) Charges made by buses, taxicabs, etc., for
2 advertising space thereon are exempt through June 30, 1987,
3 but are taxable beginning July 1, 1987 as advertising.
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5 Specific Authority 212.17(6), 212.18(2) FS.; Section 33,
6 Chapter 87-6 Laws of Florida.

7 Law Implemented as amended by Sections 3, 7, 10 and 14,
8 Chapter 87-6, Laws of Florida, 213.12 FS.

9 History - New 7-1-87.
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3 12-ER-87-80 Advertising Agencies.

4 (1) The professional service fee charged by an
5 advertising agency before July 1, 1987, is exempt only if
6 the transaction does not involve the sale of tangible
7 personal property for which a charge is made. Such services
8 performed on or after July 1, 1987, are taxable in any
9 event. In instances where tangible personal property is
10 involved, the advertising agency either sells tangible
11 personal property, uses or consumes it in the performance of
12 a service. Where sold, the sales price as defined by law is
13 the taxable amount of the tangible taxable personal
14 property. Where tangible personal property is used or
15 consumed, cost price, as defined by law, is the taxable
16 amount of the tangible personal property to the agency.

17 (2) When an advertising agency's professional fee is
18 paid in the form of a trade discount or by an addition to
19 the agency's cost, such fee is taxable.

20 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
21 Chapter 87-6 Laws of Florida.

22 Law Implemented Sections 6 and 7, Chapter 87-6, Laws of
23 Florida.

24 History - New 7-1-87.
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2
3 12-ER-87 81 Direct Pay Authority.

4 (1) Effective June 30, 1987, the provision of Rule
5 12A-1.091(6), F.A.C., which authorizes certain dealers, who
6 have obtained written consent from the Department, to
7 self-accrue use tax on purchases or repairs and direct such tax
8 directly to the department is repealed.

9 (2) Effective July 1, 1987, a dealer, registered under
10 Part I of Chapter 212, F.S., who annually purchases at least
11 \$100,000 worth of taxable tangible personal property
12 including maintenance and repairs for the dealer's own use
13 and not for resale, may request in writing, that the
14 department consent to and allow the dealer to assume the
15 obligation of self-accruing use tax due on purchases of
16 tangible personal property when the taxable status of such
17 property will be known only upon its use because the dealer,
18 by virtue of the normal characteristics of his trade or
19 business, regularly consumes that type of property as a
20 supply as well as sells the property.

21 (3) Effective July 1, 1987, a dealer, registered under
22 Part I of Chapter 212, F.S., leasing real property subject
23 to the tax imposed by s. 212.031, F.S., from a number of
24 independent property owners who, apart from the lease of
25 real property to such dealer, would not obligated to
26 register as a dealer engaged in the business of leasing real
27 property, may request written consent from the department to
28 assume the obligation of self-accruing the tax.

29 (4) Effective July 1, 1987, a dealer registered under
30 Part I of Chapter 212, F.S., who annually purchases at least
31 \$10 million dollars of taxable tangible personal property in
32 any county for the dealer's own use and not for resale, may
33 request in writing that the department consent to and allow
34 the dealer to assume the obligation of self-accruing use tax
35 due on purchases of tangible personal property.

1 (8) All dealers who have obtained written consent from
2 the department to self-accrue tax shall file with the
3 department, each year, a report in the month of September.
4 The report shall show the amount of total purchases by
5 county for the period of September 1 through August 31, and
6 the amount of use tax self-accrued on such purchases by
7 county.

8 (9) A blanket direct payment exemption certificate such
9 as described in this subsection must be given by the dealer,
10 who has obtained written consent from the department to
11 self-accrue tax, in lieu of paying the tax upon purchases of
12 tangible personal property and leases of real property to
13 their suppliers or lessors.

14 STATE OF FLORIDA
15 LIMITED SALES AND USE TAX
16 BLANKET DIRECT PAYMENT EXEMPTION CERTIFICATE
17

18 Direct Payment Permit Number _____

19 Effective Date of Permit _____

20
21 The undersigned hereby assumes the obligation of self
22 accruing and remitting use tax upon its purchases of taxable
23 tangible personal property or taxable leases of real
24 property from _____

25 (Name of seller or lessor)

26 This certificate shall remain in effect until the seller
27 of tangible personal property or the lessor of real property
28 is otherwise notified.

29 This certificate does not cover and must not be used for:

30 ~~1. Purchases of taxable items of tangible personal~~
31 ~~property when the taxable status of such property~~
32 ~~is known by the purchaser at the time of purchase.~~

33 1. When the owner of the real property is obligated to
34 be registered as a dealer engaged in the business
35 of leasing real property to persons other than the
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dealer extending the direct payment exemption certificate.

- 2. Sales or rentals of any motor vehicle, aircraft, boat or mobile home, tools, supplies, furniture, fixtures, etc.

The permit holder agrees not to permit others (including its contractors or repairmen) to use the undersigned's direct payment permit number to purchase tangible personal property or lease real property.

Name of Direct Payment Permit Holder: _____

Address: _____

Sales Tax No.: _____

Authorized Signature: _____

(Owner or owner's representative)

Date certificate given to purchaser: _____

(10) See Rule 12-ER-87-56 (5), for information regarding the procurement of self-accrual authority for services used directly and exclusively for the maintaining, retrofitting, repairing, or replacing of industrial machinery and equipment.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Section 32, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

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DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

12-ER-87-82 **Coin Operated Amusement Machines and
Devices.**

(1) When radio and television sets are placed on location by the owner under a contract whereby he receives a portion of the proceeds and the location operator receives a portion of the proceeds, total collections from such machines are subject to tax.

(2) Other coin operated amusement machines and device services are taxable. The tax shall be measured by the total collections from those machines, see 12-ER-87-30.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 1 and 7, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

2
3 12-ER-87-83 Enterprise Zone Exemptions.

4 The exemptions on enterprise zone activities enumerated
5 below which were scheduled to be sunsetted effective July 1,
6 1987, have been reinstated.

7 (1) Credit against jobs creation, see Rule 12A-1.099,
8 F.A.C.;

9 (2) Electrical energy used in enterprise zones, see
10 Rule 12A-1.102, F.A.C.;

11 (3) Building materials used in the rehabilitation of
12 real property used in an enterprise zone, see Rule
13 12A-1.100, F.A.C.; and

14 (4) Business property used in an enterprise zone, see
15 Rule 12A-1.101, F.A.C.

16 (5) The exemptions provided for in (3) and (4) hereof
17 are limited only to building materials and business
18 property. The construction service for the building
19 materials and installation charges for the business property
20 are fully taxable, see 12-ER-87-5 (combined transactions)
21 and 12-ER-87-31 (construction services).

22
23 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
24 Chapter 87-6 Laws of Florida.
25 Law Implemented Sections 2, 5 and 25, Chapter 87-6, Laws of
26 Florida.
27 History - New 7-1-87.

1 DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

2
3 12-ER-87-84 Use Tax.

4 (1) A use tax is imposed on all services purchased in
5 other states, territories, the District of Columbia or any
6 foreign country and used in this state purchased in such a
7 manner that sales tax would be applicable at the time of
8 purchase.

9 (2) The provisions of the Florida Sales and Use Tax Law
10 shall not apply to the use or consumption of services, upon
11 which a like tax equal to or greater than the amount
12 lawfully imposed has been paid in another state. If the
13 amount of tax in another state is not equal to or greater
14 than the amount of tax imposed by law then the dealer shall
15 pay to the Department of Revenue the amount sufficient to
16 make the tax paid in the other state and in this state equal
17 to the amount imposed in Chapter 212, F.S.

18
19 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
20 Chapter 87-6 Laws of Florida.
21 Law Implemented Sections 1, 7 and 12, Chapter 87-6, Laws of
22 Florida.

23 History - New 7-1-87.
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3 12-ER-87-85 Machinery and Equipment Used to Increase
4 **Productive Output.**

5 (1) The exemption for machinery and equipment
6 authorized pursuant to s. 212.08(5)(b), F.S., is expanded to
7 include services directly related to the installation of
8 such machinery and equipment, excluding construction
9 services, see 12-ER 87-31.

10 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
11 Chapter 87-6 Laws of Florida.

12 Law Implemented Sections 5, 14 and 59, Chapter 87-6, Laws of
13 Florida.

14 History - New 7-1-87.

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DRAFT/SALES TAX EMERGENCY RULES - 6/10/87

12 ER-87-86 **Machinery Equipment or Services Used in
Production of Electrical or Stream Energy.**

(1) The exemption for machinery and equipment used in the productive of electrical or stream energy authorized pursuant to 212.08(5)(c), F.S., was expanded to include services directly related to the installation of such machinery and equipment, excluding construction services, see 12-ER-87-31.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 5 and 14, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

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**12-ER-87-87 Machinery, Equipment, or Services used
under Federal Procurement Contract.**

(1) The exemption for machinery and equipment used under Federal Procurement Contracts authorized pursuant to s. 212.08(5)(d), F.S., has been expanded to include services directly related to the insulation of such machinery and equipment, excluding construction services, see 12-ER-87-31.

Specific Authority 212.17(6), 212.18(2) F.S.; Section 33, Chapter 87-6 Laws of Florida.

Law Implemented Sections 5 and 14, Chapter 87-6, Laws of Florida.

History - New 7-1-87.

2
3 12-ER-87-88 **Partial Exemption; Flyable Aircraft.**

4 (1) The partial exemption for flyable aircraft sold by
5 a manufacture of flyable aircraft authorized pursuant to s.
6 212.08(11), F.S., was reenacted. However, the provision
7 whereby the manufacture of flyable aircraft was allowed to
8 retain a 10 percent deduction of the amount of sales tax due
9 on such sales has been repealed, effective July 1, 1987.

10 (See Rule 12A 1.056, F.A.C. for dealer's collection
11 allowance.)

12 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33,
13 Chapter 87-6 Laws of Florida.

14 / Law Implemented Sections 14 and 17, Chapter 87-6, Laws of
15 Florida.

16 History -- New 7-1-87.
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3 12-ER-87-89 Sale of Food, Drink and Entertainment by
4 Restaurants and Other Eating Places; Gratuities.

5 (1) The charge made by a restaurant for preparing meat,
6 poultry and game furnished by the customer for consumption
7 elsewhere is exempt from taxation through June 30, 1987, but
8 is taxable after July 1, 1987.

9 (2) Any gratuity charge, made to a customer for the
10 service of any taxable food or drink product, is considered
11 part of the sales price of such food or drink product and
12 taxable unless:

13 (a) The charge is a voluntary gratuity or tip added to
14 or by the purchaser to his bill or money given freely by the
15 purchaser over and above the sales price of such food or
16 drink product; or

17 (b) Separately stated on the purchaser's bill or
18 invoice as a gratuity or tip; and

19 (c) All such voluntary gratuities must be distributed
20 in full to the employees at least every six months with no
21 part accruing to the benefit or advantage of the dealer.

22 (3) The fee charged (the cover charge, service charge
23 or any minimum charge) made by a restaurant, tavern, night
24 club or other like places of business is taxable.

25 (4) The room service charge made by hotels for serving
26 meals in guests' rooms is taxable.

27 (5) The total charge for corkage fees and setups,
28 including ice, waters, soda, soft drinks, etc., is taxable.

29 Specific Authority 212.17(6), 212.18(2) F.S.; Section 33.

30 Chapter 87-6 Laws of Florida.

31 Law Implemented Sections 1 and 7, Chapter 87-6, Laws of
32 Florida.

33 History - New 7 1-87.