12A-1.064 Sales to Licensed Common Carriers Operating Motor Vehicles or Railroad Rolling Stock in Interstate and Foreign Commerce.

1. SCOPE. This rule is intended to provide guidelines for the partial exemption for railroad rolling stock and parts and motor vehicles and parts provided in Section 212.08(9), F.S., to carriers who transport persons or property for hire in interstate or foreign commerce.

2. MOTOR VEHICLES.
   a. Motor vehicles used to transport persons or property for hire in interstate or foreign commerce that are operated by any common carrier licensed by the United States Department of Transportation, and parts for such motor vehicles, are subject to the partial exemption provided in Section 212.08(9)(b), F.S. Tax imposed is based on the ratio of Florida highway mileage to total highway mileage traveled by the carrier’s motor vehicles that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year of the carrier.
   b. A motor vehicle is used by a common carrier in interstate and foreign commerce if it carries persons or property that are moving in interstate or foreign commerce, whether the vehicle travels outside Florida or only within Florida.
   c. Motor vehicles that are purchased by common carriers outside Florida, and put into service in interstate commerce outside Florida prior to entering Florida, as evidenced by the registration of the motor vehicles in another state, are not subject to Florida sales or use tax.
   d. Charges for the installation of parts that are installed in Florida on motor vehicles used by a licensed common carrier in interstate or foreign commerce are subject to the partial exemption. Repairs and installation of parts on such vehicles performed outside Florida are not subject to tax.
   e. Motor vehicles, and parts thereof, used exclusively in intrastate commerce do not qualify for the partial exemption.
   f. 1. Trucking companies or other companies that transport products between Florida and other states that do not operate as licensed common carriers are not entitled to the partial exemption.
   2. Vehicles, and parts thereof, used by contract carriers or private carriers do not qualify for the partial exemption.
   g. Tools and materials and supplies, such as sandpaper, blasting sand, sanding discs, masking tape, rags, and mineral spirits, used in the repair and maintenance of motor vehicles while they are in Florida are subject to tax at the rate imposed by Section 212.05(1), F.S.

3. RAILROADS.
   a. Railroads that are licensed as common carriers by the United States Surface Transportation Board are subject to tax on rolling stock, and parts thereof, used to transport persons or property for hire in interstate or foreign commerce, as provided in Section 212.08(9)(a), F.S. The tax is based on the ratio of Florida mileage to total mileage traveled by the carrier during the previous fiscal year of the carrier.
   b. The lease or rental of railroad cars by a railroad company for use on its tracks is exempt if the charges are subject to the jurisdiction of the United States Surface Transportation Board and based on hourly, daily, or mileage charges for the presence of a railroad car on the tracks of the railroad company paying the rental charge.
   c. Charges made pursuant to railroad car service agreements are exempt from tax.
   d. Railroad rolling stock, and parts thereof, used by persons are not licensed by the United States Surface Transportation Board as common carriers do not qualify for the partial exemption.
   e. Tools and materials and supplies, such as sandpaper, blasting sand, sanding discs, masking tape, rags, and mineral spirits, used in the repair and maintenance of railroad rolling stock while the rolling stock is in Florida are subject to tax at the rate imposed by Section 212.05(1), F.S.
   f. Tangible personal property used in the construction, improvement, and repair of a railroad company’s real property is subject to tax at the rate imposed by Section 212.05(1), F.S.

4. PARTIAL EXEMPTION AT THE TIME OF PURCHASE.
   a. To obtain the partial exemption provided in Section 212.08(9)(a) or (b), F.S., at the time of purchase, the licensed common carrier purchasing a motor vehicle, or parts thereof, or the licensed railroad carrier purchasing rolling stock, or parts thereof, for use to transport persons or property for hire in interstate or foreign commerce, is required to:
      1. Hold a valid sales and use tax certificate of registration; and
2. Hold a valid Sales and Use Tax Direct Pay Permit issued by the Department. To obtain a direct pay permit, the carrier is required to file an Application for Self-Accrual Authority/Direct Pay Permit-Sales and Use Tax (Form DR-16A, incorporated by reference in Rule 12A-1.097, F.A.C.) with the Department, as provided in Rule 12A-1.0911, F.A.C.

(b) Any licensed common carrier or licensed railroad carrier that holds a valid direct pay permit may extend a copy of its direct pay permit to the selling dealer at the time of purchase or lease in lieu of paying tax to the selling dealer. Licensed common carriers and licensed railroad carriers are not authorized to extend a copy of an Annual Resale Certificate to make such purchases tax-exempt. Any licensed common carrier or licensed railroad carrier that extends a copy of its direct pay permit to a selling dealer in lieu of paying tax on property subject to the partial exemption under Section 212.08(9)(a) or (b), F.S., is required to accrue and remit the tax due based on the carrier’s mileage apportionment factor directly to the Department.

(5) COMPUTATION OF MILEAGE APPORTIONMENT FACTOR AND TAX DUE.

(a)1. Licensed common carriers are required, at the end of each fiscal year of operation, to determine the ratio of Florida highway mileage to total highway mileage traveled by the carrier’s motor vehicles used in interstate or foreign commerce that had at least some Florida highway mileage during the fiscal year. The ratio computed is the carrier’s mileage apportionment factor to be applied to purchases during the following fiscal year.

2. Licensed railroad carriers are required, at the end of each fiscal year of operation, to determine the ratio of Florida mileage to total mileage traveled by the carrier’s rolling stock during the fiscal year. The ratio computed is the carrier’s mileage apportionment factor to be applied to purchases during the following fiscal year.

(b)1. Licensed common carriers operating motor vehicles to transport persons or property for hire in interstate or foreign commerce are required to apply their mileage apportionment factor calculated at the end of the prior fiscal year to the total monthly purchases and leases in Florida of qualified motor vehicles, and parts thereof, during the current fiscal year. Carriers are required to calculate and report tax to the Department on a monthly basis.

2. Licensed railroad carriers operating rolling stock to transport persons or property for hire in interstate or foreign commerce are required to apply their mileage apportionment factor calculated at the end of the prior fiscal year to the total monthly purchases in Florida of qualified rolling stock, and parts thereof, during the current fiscal year. Carriers are required to calculate and report tax to the Department on a monthly basis.

(c) During a licensed common carrier’s or a licensed railroad carrier’s initial year of operation in Florida, the carrier may estimate the mileage apportionment factor on the basis of the ratio of anticipated Florida mileage to anticipated total miles for that year for motor vehicles or railroad rolling stock that are anticipated to have at least some Florida mileage. At the end of the initial year of operation, the carrier is required to determine the mileage apportionment factor based on the actual Florida mileage and the actual total mileage for the initial year of operation. The carrier is required to pay any additional tax due based on the actual mileage apportionment factor. The tax is due with the carrier’s return due for the first month of the carrier’s second year of operation in this state. The carrier may take a credit or apply to the Department for a refund of tax paid, as provided in Rule 12A-1.014, F.A.C., when the tax paid based on the estimated mileage apportionment factor exceeds the tax due based on the actual factor for the initial year of operation.

(6) FUEL USED IN INTERSTATE OR FOREIGN COMMERCE.

(a) Diesel fuel used in vehicles for off-road purposes is subject to the partial exemption provided in Section 212.08(4)(a)2., F.S. Tax is based on the licensed carrier’s mileage apportionment factor when:

1. The fuel is placed into a separate tank that is not connected to the fuel supply system of a motor vehicle operated by a licensed common carrier to transport persons or property for hire in interstate or foreign commerce, and the fuel is used to operate a refrigeration unit or other equipment located on the motor vehicle; or

2. Used during idle time for the purpose of running climate control systems and maintaining electrical systems in motor coaches that meet the criteria specified in Section 206.8745(8), F.S., and that are operated by licensed common carriers to transport persons or property for hire in interstate or foreign commerce.

(b) Diesel fuel used in locomotives operated by licensed railroad carriers to transport persons or property for hire in interstate or foreign commerce is subject to the partial exemption provided in Section 212.08(4)(a)2., F.S. Tax is based on the carrier’s mileage apportionment factor.

(c) Licensed common carriers or licensed railroad carriers who purchase dyed diesel fuel subject to sales tax at the time of purchase may extend a copy of the carrier’s Sales and Use Tax Direct Pay Permit to the selling dealer to claim the partial exemption at the time of purchase. Any carrier that extends a permit to purchase the fuel exempt from sales tax is required to remit the sales tax
due on the diesel fuel based on the carrier’s mileage apportionment factor directly to the Department.

2. Licensed railroad carriers that hold a valid Sales and Use Tax Direct Pay Permit may extend a copy of the permit to the selling dealer to claim the partial exemption at the time of purchase. The carrier is required to remit the tax due on the diesel fuel based on the carrier’s mileage apportionment factor directly to the Department.

(7) REFUNDS TO CLAIM THE PARTIAL EXEMPTION.

(a) Licensed common carriers and licensed railroad carriers who do not hold a valid Sales and Use Tax Direct Pay Permit are required to pay tax to the selling dealer at the time of purchase or lease. Carriers entitled to the partial exemption provided in Section 212.08(9), F.S., may obtain a refund of tax paid at the time of purchase or lease, less the amount of tax due under the partial exemption, directly from the Department.

(b) Any licensed common carrier or licensed railroad carrier seeking a refund of tax paid in excess of the tax due under the partial exemption must:

1. Obtain a certified statement from the selling dealer that the tax paid to the dealer has been remitted to the Department. The certified statement is to be submitted to the Department with an Application for Refund-Sales and Use Tax-Sales and Use Tax. A suggested format of a certificate is provided in paragraph (c);

2. File with the Department an Application for Refund-Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), including the required statement, that meets the requirements of Sections 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C., within 3 years after the date the tax was paid.

(c) The following is a suggested format for a certificate to be executed by the selling dealer to evidence that tax paid to the selling dealer has been remitted to the Department of Revenue:

CERTIFICATE

TAX PAID TO THE DEPARTMENT OF REVENUE

The undersigned officer who is duly authorized by ________________________________, SELLING DEALER, hereby certifies to ________________________________, PURCHASER, it has paid sales tax to the Florida Department of Revenue, totaling the sum of $___________.
The company further certifies the sales tax for the attached invoice(s) was paid to the State of Florida in the month(s) of under sales tax number __________________.

____________________________________
SIGNATURE OF AUTHORIZED OFFICER

______________________________
TITLE

(8) DAMAGE CLAIMS AND DEMURRAGE CHARGES BY CARRIERS.

(a) The payment of a damage claim by a carrier to any person for damage suffered by merchandise in transit is not a sale of tangible personal property and is not subject to tax, even when the carrier retains the damaged property under settlement of the claim.

(b) The charge for repairs of the damaged property to the carrier is subject to tax.

(c) Any carrier who maintains and operates a salvage depot to sell merchandise damaged in transit and acquired by the carrier in settlement of a damage claim is required to collect sales tax on sales of the damaged property.

(d) Demurrage charges for delays due to loading or unloading cargo beyond the stipulated time are not for the rental or lease of property and are not subject to tax. Example: The charge made to a shipper by a carrier for the retention of a railroad car, trailer, or semi-trailer beyond the scheduled time allowed, due to the delay of loading or unloading goods, is not taxable, irrespective of how the charge is designated.

(9) RECORDKEEPING REQUIREMENTS.

(a) Dealers must maintain copies of direct pay permits, certificates, and any other documentation required under the provisions of this rule until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

(b) Electronic storage by the selling dealer of the required certificates and other documentation through use of imaging, microfiche, or other electronic storage media will be sufficient compliance with the provisions of this subsection.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(10)(g), 212.05(1), 212.06(1), 212.08(4)(a), (9), 212.085, 212.13(1), 212.21(3), 213.255(1), (2), (3), 215.26(2) FS. History–Revised 10-7-68, 1-7-70, 6-16-72, Amended 12-11-74, 5-23-77, 9-26-77, 10-18-78, 3-30-79, 4-10-79, 3-27-80, 7-20-82, 10-13-83, 8-28-84, Formerly 12A-1.64, Amended 1-2-89, 10-16-89, 7-30-91, 3-20-96, 11-30-97, 7-1-99, 6-
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