

12A-1.061 Rentals, Leases, and Licenses to Use Transient Accommodations.

(1) Except as provided in paragraphs (a) through (d), every person is exercising a taxable privilege when engaging in the business of renting, leasing, letting, or granting licenses to others to use transient accommodations, unless the rental charges or room rates are specifically exempt.

(a) Owners or operators of migrant labor camps, as defined in Section 212.03(7)(d), F.S., and housing authorities that are specifically exempt under Section 423.02, F.S., are not exercising a taxable privilege when in the business of renting, leasing, letting, or granting licenses to others to use, occupy, or enter upon such facilities and are not required to register with the Department.

(b) Any person who exclusively enters into a bona fide written lease, as provided in subsection (15), for continuous residence for periods longer than six months to lease, let, rent, or grant a license to others to use, occupy, or enter upon any transient accommodation is not required to register with the Department.

(c) Institutions designed and operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated or for any reason dependent upon special care or attention are not providing transient accommodations to the patient, as provided in Section 212.03, F.S., and are not required to register with the Department. Charges made for living accommodations to the patients in such facilities are not subject to the tax imposed under Section 212.03, F.S. Charges made for transient accommodations to any person other than the patient by the institution are subject to tax under the provisions of this rule and any institution that makes such charges is required to register with the Department.

(d) Day nurseries, kindergartens, and church-operated or other custodial camps that primarily provide professional and personal supervisory and instructional services are not required to register with the Department or collect tax on their charges for lodging to the students or campers.

(2) **DEFINITIONS.** For the purposes of this rule, the following terms are defined:

(a) "Bedding" means a mattress, box spring, bed frame, pillows and bed linens, as well as sleeper type couches, futons, and day beds. Effective January 1, 1998, "bedding" also includes roll-a-way beds, baby cribs, and portable baby cribs. This list is not intended to be an exhaustive list.

(b) "Consumables" means tangible personal property that is used, consumed, or expended by guests or tenants when occupying transient accommodations, such as soap, toilet paper, tissues, shower caps, shaving kits, shoe mitts, shampoo, lotions, mouthwash, matches, laundry bags, swimming suit wrappers, pens, stationery, calendars, toothpaste, toothbrushes, newspapers, postcards, guides for guests, books, mints, travel packets, and sewing kits. This list is not intended to be an exhaustive list.

(c) "Fixtures" means and includes items that are an accessory to a building, other structures, or land and that do not lose their identity as accessories when installed, but that do become permanently attached to realty. An example of a "fixture" is an in-room safe that is installed within a transient accommodation, whether in the wall or bolted to the floor.

(d) "Furnishings" means and includes any moveable article or piece of equipment that is provided as a normal accessory to a particular transient accommodation. Some examples of items that would constitute a "furnishing," if the item was a normal accessory to a particular transient accommodation, are furniture, ironing boards, irons, hair dryers, televisions, video cassette recorders (VCRs), remote controls for televisions or VCRs, microwave ovens, toasters, or coffee makers. This list is not intended to be an exhaustive list.

(e) "Rental charges or room rates" means the total consideration received solely for the use or possession, or the right to the use or possession, of any transient accommodation. See subsection (3) of this rule.

(f) "Transient accommodation" means each living quarter or sleeping or housekeeping accommodation in any hotel, motel, apartment house, multiple unit structure (e.g., duplex, triplex, quadplex, condominium), roominghouse, tourist or mobile home court (e.g., trailer court, motor court, recreational vehicle camp, fish camp), single family dwelling, garage apartment, beach house or cottage, cooperatively owned apartment, condominium parcel, timeshare resort, mobile home, or any other house, boat that has a permanent, fixed location at a dock and is not operated on the water away from the dock by the tenant (e.g., houseboat permanently moored at a dock, but not including cruise liners used in their normal course of business), vehicle, or other structure, place, or location held out to the public to be a place where living quarters or sleeping or housekeeping accommodations are provided to transient guests for consideration. Each room or unit within a multiple unit structure is an accommodation.

(3) RENTAL CHARGES OR ROOM RATES.

(a) Rental charges or room rates for the use or possession, or the right to the use or possession, of transient accommodations are subject to tax, whether received in cash, credits, property, goods, wares, merchandise, services, or other things of value.

(b)1. Rental charges or room rates include any charge or surcharge to guests or tenants for the use of items or services that is required to be paid by the guest or tenant as a condition of the use or possession, or the right to the use or possession, of any transient accommodation. Such charges or surcharges are included even when the charges to the transient guest are:

- a. Separately itemized on a guest's or tenant's bill, invoice, or other tangible evidence of sale; or
- b. Made by the owner or the owner's representative to the guest or tenant for items or services provided by a third party.

2. Rental charges or room rates do not include charges or surcharges to guests or tenants for the use of items or services for transient accommodations when:

- a. The charges or surcharges are separately itemized on a guest's or tenant's bill, invoice, or other tangible evidence of sale; and
- b. The items or services are withheld when a guest or tenant refuses to pay the charge or surcharge.

3. Rental charges or room rates include charges or surcharges for the use of items or services when all guests or tenants receive the use of such items or services. Such charges or surcharges are subject to tax even though the charges to an individual guest or tenant may be adjusted to waive the charge or surcharge or the charges are separately itemized on a guest's or tenant's bill, invoice, or other tangible evidence of sale. Any waiver of a charge or surcharge to an individual guest or tenant is considered an adjustment to the rental charges or room rates for transient accommodations.

4.a. Example: A guest rents a room in a resort hotel that charges each guest a \$5 resort fee to receive daily newspapers and use of its health club facilities. When a guest objects to the fee, the hotel will waive the fee for that individual guest. All guests receive the newspaper and may use the health club facilities, whether or not the guest pays the fee. The \$5 resort fee charged by the resort hotel to its guests is included in the room rates subject to tax. When the resort hotel waives the fee for an individual guest, the waiver of the fee is considered an adjustment to the room rate.

b. Example: A guest rents a beach cottage for three months. The owner of the cottage requires the cottage to be cleaned by Company X and separately itemizes the cleaning services on the guest's bill. Because the charges for the cleaning services provided by Company X are required to be paid as a condition for the right to use the beach cottage, the charges are included in the rental charges and are subject to tax. The charges are subject to tax even though the cleaning services are provided by a third party and the charges are separately stated on the guest's bill.

c. Example: A guest rents a condominium unit from the unit owner for two weeks. If a guest wants daily cleaning services, the owner will arrange for these services, but does not require the guest to purchase the additional services. The unit owner separately itemizes the additional maid services on the guest's bill. Because the additional maid services are not a requirement for the right to use the condominium unit and the guest does not receive the services without payment for the services, the charges are not included in the amount of taxable rental charges.

(c)1. Rental charges or room rates include any charge or surcharge to a guest or tenant for gratuities, tips, or similar charges except when:

a. The charge is separately stated as a gratuity, tip, or similar charge on a guest's or tenant's bill, invoice, or other tangible evidence of sale; and

b. The owner or owner's representative does not receive, either directly or indirectly, any monetary benefit from any such gratuity, tip, or similar charge.

2. Any fee imposed by a credit card company on the owner or owner's representative is not construed as the retention of such monies by the owner or owner's representative.

(d) Charges or fees for the processing of a registration application or other application for approval to rent, lease, let, or license a particular transient accommodation are not subject to tax, unless the charges are used to offset or reduce rental charges or room rates that are charged to a guest or tenant who has been approved to rent, lease, let, or license that accommodation.

(e) Rental charges or room rates include assessments required to be paid by a guest or tenant to the owner, the owner's representative, or the owner's designated payor, under the terms of an agreement for the use or possession, or the right to the use or possession, of transient accommodations. Such assessments may include charges for maintenance fees, membership dues, or similar charges.

(f) Owners or owners' representatives of transient accommodations who provide transient accommodations to guests or tenants for no consideration, as provided in paragraph (a), are not required to collect tax from the guest or tenant or pay tax on the value of the accommodation.

(g) Separately itemized charges or surcharges, as provided in this Section, to guests or tenants for tangible personal property or services that must be included in the taxable rental charges or room rates under the provisions of this rule are not also subject to tax

as the sale, rental, lease, or license to use tangible personal property or the sale of taxable services when sold to a guest or tenant. See subsection (4) for use tax due on such taxable tangible personal property or services.

(h) The following is a non-inclusive list of charges separately itemized on a guest's or tenant's bill, invoice, or other tangible evidence of sale that are NOT rental charges or room rates for transient accommodations:

1. Charges for communications services. See Rule Chapter 12A-19, F.A.C.
2. Meals and beverages, whether served in the guest's or tenant's accommodation or served at a restaurant, and charged to the guest's accommodation bill. See Rule 12A-1.011, F.A.C.
3. Food, drinks, and other items, such as combs, shampoo, playing cards, aspirin, or similar items purchased through a device (refrigerator) located within a guest's or tenant's accommodation. See Rules 12A-1.011 and 12A-1.044, F.A.C.
4. Charges for the use of safes or safety deposit boxes located at an establishment's registration desk. See Rule 12A-1.070, F.A.C.
5. Charges, fines, or damage fees for lost or damaged items, such as room keys, towels, linens, dishes, silverware, or other similar items.
6. Charges for admissions, such as golf, tennis, or cultural events, billed to a guest's or tenant's accommodation bill. See Rule 12A-1.005, F.A.C.
7. Charges for transportation services. See Rule 12A-1.045, F.A.C.
8. Laundry services charged to a guest's or tenant's accommodation bill. See Rule 12A-1.023, F.A.C.
9. Valet service charged to a guest's or tenant's accommodation bill. See Rule 12A-1.070, F.A.C.
10. Merchandise packaging or delivery service charged to a guest's or tenant's accommodation bill, such as flower delivery services or charges for packaging and delivering items for shipment under the direction of the guest or tenant. See Rule 12A-1.047, F.A.C.
11. Charges for areas that are not used as transient accommodations, such as sample and display rooms, auditoriums, office space, or garage space. See Rules 12A-1.070 and 12A-1.073, F.A.C.
12. Charges for the storage of mobile homes, travel trailers, motor homes, or recreational vehicles.
13. Assessments for maintenance and other expenses of the property charged by a corporation to a stockholder who resides in an apartment house.
14. Consideration paid by a timeshare owner for purchase of a timeshare estate, as defined in Section 721.05, F.S. Consideration paid under a timeshare license, as defined in Section 721.05, F.S., are rental charges or room rates and is subject to tax.
15. Service charges paid by owners of apartments or units in a condominium or cooperatively owned apartment house.

(4) PURCHASES BY OWNERS OR OWNERS' REPRESENTATIVES OF TRANSIENT ACCOMMODATIONS.

(a) The purchase of beddings, furnishings, fixtures, toiletries, consumables, taxable maid and cleaning services, and similar items or other taxable services by owners or owners' representatives of transient accommodations is subject to tax, except as provided in paragraph (b). The purchase of these items and services is not subject to the tourist development tax, as provided in Section 125.0104, F.S., the tourist impact tax, as provided in Section 125.0108, F.S., or the convention development taxes, as provided in Section 212.0305, F.S.

(b) Owners or owners' representatives may purchase or lease tangible personal property without paying tax only when the taxable property is:

1. Purchased exclusively for resale or re-rental as provided in subsection 12A-1.071(2), F.A.C.; and

2. Charges to the guest or tenant for the purchased or leased property are not required under the provisions of this rule to be included in the taxable amount of rental charges or room rates. See subsection 12A-1.071(2), F.A.C.

(5) DEPOSITS, PREPAYMENTS, AND RESERVATION VOUCHERS.

(a) The following deposits or prepayments paid by guests or tenants to the owner or owner's representative of transient accommodations are NOT rental charges or room rates and are not subject to tax:

1.a. Deposits or prepayments that are required to be paid to secure a potential guest or tenant the right to rent, lease, let, or license a transient accommodation by a time certain. Such deposits do not guarantee the transient guest or tenant the use or possession, or the right to the use or possession, of transient accommodations.

b. Example: A potential tenant reserves a beach house for a specific week from a management company. The management company requires a \$100 reservation deposit to hold the beach house until a time certain, such as 6:00 p.m., the first night of the reserved week. The tenant is unable to use the beach house for the reserved week, but fails to cancel the reservation with the

management company. The management company retains the \$100 deposit. Because the \$100 charge does not provide the tenant the right to the use of the beach house, the \$100 deposit is not subject to tax.

c. Example: A potential guest makes reservations at a hotel for a designated night. The hotel requires a deposit equal to the room rate to hold a room until a time certain, such as 6:00 p.m., on the designated night. The guest does not arrive at the hotel and fails to cancel the reservation. The hotel retains the deposit. Because payment of the deposit did not provide the potential guest the right to the use of the room and the hotel did not collect any tax from the potential guest, the room deposit is not subject to tax.

2.a. Security deposits that are refundable at the expiration of any agreement for the use or possession, or the right to the use or possession, of a transient accommodation, unless the security deposits are withheld by the owner or owner's representative and applied to unpaid rental charges or room rates at the expiration of the agreement.

b. "Security Deposits," for purposes of this rule, means any refundable deposit by any guest or tenant with the owner or owner's representative of transient accommodations as security for full and faithful performance by the guest or tenant of the terms of any agreement for the use or possession, or the right to the use or possession, of a transient accommodation, including damages to the accommodation. Security deposits are refundable, unless the guest or tenant has caused damage or injury to the property or has breached the terms of the agreement.

c. Example: To lease an apartment for three months, the owner requires the tenant to pay a security deposit equal to one month's rental charge. The apartment is damaged during the lease period, and the security deposit is retained by the owner at the end of the rental period. The security deposit is not subject to tax when collected, or when retained at the end of the rental period, by the owner.

(b) Rental charges or room rates include deposits or prepayments that guarantee the guest or tenant the use or possession, or the right to the use or possession, of transient accommodations during a specified rental period under the provisions of an agreement with the owner or owner's representative of transient accommodations. The owner or owner's representative is required to provide transient accommodations to any guest or tenant that enters into such an agreement and pays the required prepayment or deposit, even when the guest or tenant does not occupy the accommodation.

1. Example: A potential tenant enters into an agreement with the owner of a condominium unit to reserve the unit for a specified week. In exchange for the required deposit, the tenant is guaranteed that the unit will be available for use during the specified week. The tenant is permitted to cancel the reservations and receive a full refund of the required deposit provided that the cancellation is received 48 hours prior to the scheduled arrival date. The tenant makes the required prepayment by issuing a credit card authorization for the amount of the weekly rental charges. Even though the tenant is unable to use the unit during the specified week, the tenant fails to cancel the reservation. The condominium owner charges the tenant's credit card for the unit. The weekly rental charges paid by the tenant for the condominium unit is subject to tax, even though the tenant does not use the unit.

2. Example: A hotel guarantees that it will provide room accommodations on a designated date to potential guests that make reservations and pay a required room deposit. To receive a refund of the required room deposit, the potential guest must cancel his or her reservations by 4:00 p.m. of the designated date. A potential guest that has made reservations and has paid the required room deposit fails to cancel the reservations and fails to arrive at the hotel on the designated date to use the reserved room accommodations. Because the potential guest fails to cancel the reservations, the guest forfeits the room deposit. Even though the guest did not occupy a room at the hotel, the forfeited room deposit is subject to tax.

(c) Deposits or prepayments that are held by the owner or owner's representative and subsequently used to offset or reduce a guest's or tenant's rental charges or room rates are subject to tax when the transient accommodations are provided to the guest or tenant.

(d).1. Deposits or prepayments applied to rental charges or room rates are deemed to include the applicable taxes when a guest or tenant has been put on notice that the amount of any deposit or prepayment includes any applicable taxes. See subsection (18) of this rule.

2. Example: A potential guest reserves a hotel room for a designated night by issuing a credit card authorization for the amount of the room rate, plus applicable taxes, to the hotel. The guest does not arrive at the hotel to occupy the room, but fails to cancel the reservation. The hotel charges the guest's credit card for the room, plus applicable taxes. The hotel is required to remit the applicable taxes to the proper taxing authority.

(e).1. "Reservation voucher" means a voucher which entitles the purchaser to rent transient accommodations that are reserved by the seller for the purchaser at a designated location for a specified rental period and at a specified room rate or rental charge. The voucher may contain the following information: the designated transient accommodation; the room rate or rental charge for the accommodation; the reservation deposit, prepayment, or fee paid to the seller of the voucher; the balance of the room rate or rental

charge due to the owner or owner's representative of the accommodation; and a statement regarding the applicable tax due on the room rate or rental charge. The voucher is required to be presented to the owner or owner's representative of the transient accommodations. When the voucher is presented to the owner or owner's representative, the amount of the reservation deposit, prepayment, or fee paid to the seller of the voucher is a part of the room rate or rental charge paid for the right to use the accommodation. The owner or owner's representative of the transient accommodation is required to collect and remit the applicable taxes due to the proper taxing authority on the total room rate or rental charge, including any amounts separately stated on the redeemed voucher as a reservation deposit, prepayment, or fee.

2. The owner or owner's representative may execute a written agreement to designate the seller of the reservation voucher as the party responsible to collect and remit the applicable transient rental taxes on the portion of the room rate or rental charge for the transient accommodation collected by the seller of the voucher. Sellers of reservation vouchers who have entered into such agreements with owners or owners' representatives of transient accommodations are required to collect and remit the applicable taxes due to the proper taxing authority on the portion of the room rate or rental charge collected by such seller. The applicable taxes are to be collected at the rates imposed by the county where the transient accommodation is located. The amount of the rental charge or room rate collected by the seller of the voucher must be indicated, and the tax must be separately stated, on the reservation voucher.

(6) RECREATIONAL RESORT MEMBERSHIP AGREEMENTS.

(a) The sale of memberships in this State for the right to be a member of a recreational resort providing transient accommodations and other recreational facilities in this State is a taxable lease of transient accommodations.

(b) Rental charges made pursuant to an agreement by which the owner or the owner's representative offers for lease the right to reserve and occupy either a general or specific type of unit or transient accommodation, usually for 1 or 2 weeks during a year for a specific number of years, are subject to tax. Tax is due on the rental charges when the charges are due, whether the charges are paid in full at the time of agreement or financed over a period of time. When the rental charges are financed over a period of time as an installment sale or deferred payment plan, tax is due when the agreement is executed. All charges required to be paid by the lessee to the owner, lessor, or the lessor's representative under the terms of the agreement, such as maintenance fees, membership dues, or similar charges, are subject to tax at the time payment is due.

(c) 1. A typical membership agreement grants the member the right to use certain resort facilities located in Florida and the right to use certain resort facilities located outside Florida for a nominal amount or free of any charge. The agreement provides that the member has the right to stay at a resort facility for a limited number of consecutive days (usually 7 to 30 days) within any year for a designated number of years during the life of the membership. The agreement further provides that the membership fee is to be paid in full at the time of entering into the agreement, or that a partial payment be made with the remaining amount to be financed over a period of time. In addition to the initial membership fee, the agreement requires that periodic payments of maintenance fees, dues, or similar charges be made to use the facilities and to retain membership in the resort.

2. The membership agreement in subparagraph 1. is subject to tax because the agreement allows the member to use certain resort facilities located in this State, even though the agreement may also allow the member to use a resort's facility located outside the State of Florida, for a nominal charge, or free of any charge. The tax is to be collected by the person selling the membership on the total initial membership fee at the time the membership agreement is entered into, whether the membership is paid in full or financed over a period of time. Tax is due on all charges for maintenance fees, membership dues, or similar charges when such charges are billed to the member.

3. Membership agreements entered into with resort facilities located outside this State that also allow a member to use resort facilities located in Florida for a nominal charge or free of charge are not subject to tax, unless the out-of-state seller of the membership allocates or distributes a portion of the proceeds to the Florida resort. Any proceeds allocated or distributed to the Florida resort are taxable. In addition, any charge made by the owner or lessor of a Florida resort to an out-of-state membership holder for the right to use its Florida resort is subject to tax.

(d) Agreements that convey a fee interest in real property are not membership agreements as contemplated by this subsection and are not subject to sales tax.

(7) REGISTRATION.

(a) Except as provided in subsection (1), every person that rents, leases, lets, or grants a license to others to use any transient accommodation is required to register with the Department. Agents, representatives, or management companies that collect and receive rent as the owner's representative are required to register as a dealer and collect and remit the applicable tax due on such

rentals to the proper taxing authority. If the agent, representative, or management company has no role in collecting or receiving the rental charges or room rates, the person receiving such rent is required to register as a dealer and collect and remit the applicable tax due on such rentals to the proper taxing authority.

(b)1. Transient accommodations, including timeshare units, that are rented, leased, let, or for which a license to use has been granted to others for periods six months or less may be collectively registered by an agent, representative, or management company under the provisions of subsection (3) of Rule 12A-1.060, F.A.C.

2. Even though a written agreement exists between the agent, representative, or management company and the property owner, the property owner remains responsible for the tax obligation in the event the agent, representative, or management company fails to collect or remit the tax due to the proper taxing authority and the taxing authority is unable to collect the applicable tax from the agent, representative, or management company.

3. The following is a suggested format of the written agreement executed after July 1, 1994, between an agent, representative, or management company and the owner of any transient accommodations that are offered for rent, lease, let, or for which a license to use is granted to others for periods of six months or less:

I, _____ (Name of Property or Timeshare Period Owner), hereby authorize _____ (Name of Agent, Representative, or Management Company) to act as my representative to rent, lease, let, or grant a license to others to use my described property (properties) or timeshare period (timeshare periods) located at _____ (use additional paper if necessary) and to charge, collect, and remit sales tax levied under Chapter 212, F.S., to the Department of Revenue. I acknowledge that, by renting, leasing, letting, or offering a license to others to use any transient accommodations, as defined in subsection (2) of Rule 12A-1.061, F.A.C., I am exercising a taxable privilege under Chapter 212, F.S., and as such acknowledge that I am ultimately liable for any sales tax due the State of Florida on such rentals, leases, lets, or licenses to use. I fully understand that should the State be unable to collect any taxes, penalties, and interest due from the rental, lease, let, or license to use my property, a warrant for such uncollected amount will be issued and will become a lien against my property until satisfied.

(Signature of Property Owner/Lessor)

(Signature of Agent, Representative, or Management Company).

4. The agent, representative, or management company and the property owner must maintain a copy of the written agreement in their records until the tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Upon request, a copy of the agreement must be made available to the Department.

5. The agent, representative, or management company must notify the Department of Revenue when it receives affirmative, written notice that it ceases to manage any transient accommodation for which it has collectively registered under the provisions of subsection (3) of 12A-1.060, F.A.C. The agent, representative, or management company may contact any taxpayer service center or Central Registration at (850) 488-9750. A written notification that includes the sales tax registration number of the property or timeshare unit; the name, address, and federal identification number, social security number, or individual taxpayer identification number of the property owner; and the name, location address, federal identification number, social security number, or individual taxpayer identification number, and sales tax registration number of the agent, representative, or management company may be provided to the Department at the following address:

Florida Department of Revenue
Central Registration
P. O. Box 6480
Tallahassee, Florida 32314-6480.

6. Social security numbers are used by the Department as unique identifiers for the administration of Florida's taxes. Social security numbers obtained for tax administration purposes are confidential under Sections 213.053 and 119.071, F.S., and not subject to disclosure as public records.

(8) SUBLEASES OR ASSIGNMENTS.

(a) Any person who has the right to the use or possession of any transient accommodation and who subrents, subleases, sublets, or licenses a portion of the accommodation is required to register as a dealer and collect and remit the applicable tax due on all such subrents, subleases, sublets, or licenses to the proper taxing authority, except as provided in subsection (1) of this rule.

(b) The dealer may elect to issue a resale certificate to the property owner or the property owner's representative to purchase

transient accommodations exempt from tax or take a credit for the tax that was paid to the owner or owner's representative for transient accommodations when:

1. The transient accommodations are subrented, subleased, sublet, or licensed by the dealer to other guests or tenants; and
2. The dealer collects the applicable tax from the guest or tenant.

(c) Dealers must remit the applicable tax due to the proper taxing authority on the portion of the rental charges pertaining to any transient accommodation that was purchased tax exempt but is used by the dealer.

(9) MOBILE HOMES, RECREATIONAL VEHICLES, AND PARKS.

(a)1. Mobile homes, travel trailers, motor homes, recreational vehicles, or any other vehicle are transient accommodations, even though the mobile home or vehicle may be subject to other Florida taxes when both of the following conditions are met (See subsection 12A-1.007(11), F.A.C.):

a. The mobile home or vehicle must be a place where living quarters or sleeping or housekeeping accommodations are provided to guests or tenants for consideration; and

b. The mobile home or vehicle must have a fixed location and may not be operated over the roads of this State. See paragraphs (c) and (d) of this subsection.

2. Rental charges or room rates for mobile homes or vehicles rented, leased, let, or licensed as transient accommodations as provided in subparagraph 1., are subject to tax.

(b)1. Rental charges for the rental or lease of space in trailer camps, mobile home parks, and recreational vehicle parks (e.g., trailer court, motor court, R.V. camp, fish camp, or other similar camps and parks) are subject to tax, except as provided in paragraph (d).

2. If any person rents or leases space in a trailer camp, mobile home park, or recreational vehicle park, except as provided in paragraph (d), that person is exempt from tax on rental charges due after the first six months of the rental period, even if the mobile home or vehicle is temporarily removed from the rented or leased space, when:

- a. That person has paid the applicable tax due on the rental charges for the first six months;
- b. That person continues to have the right to occupy the mobile home or vehicle located at that rented or leased space; and
- c. The provisions of subparagraph 3. do not apply.

3. The rental or lease of space for the storage of any vehicle described in paragraph (a) is subject to tax due on the rental or lease of real property, as provided in Section 212.03(6) or 212.031, F.S., and is not subject to the tourist development tax, as provided in Section 125.0104, F.S., the tourist impact tax, as provided in Section 125.0108, F.S., or the convention development taxes, as provided in Section 212.0305, F.S.

(c) When any vehicle described in paragraph (a) is moved from a space in one trailer camp, mobile home park, or recreational vehicle park, to a space in another camp or park, the rental charges for space at the new camp or park are subject to tax, except as provided in paragraph (d).

(d)1. Rental charges for transient accommodations at new trailer camps, new mobile home parks (except mobile home lots regulated under Chapter 723, F.S.), and new recreational vehicle parks are subject to tax until more than 50 percent of the total rental units available are occupied by tenants who have continuously resided there for more than three months. When more than 50 percent of the total rental units available are occupied by tenants who have continuously resided there for more than three months, the owner or owner's representative of the camp or park is required to declare to the Department that the rental of transient accommodations at the new camp or park is no longer subject to tax. All rental charges for transient accommodations at a camp or park are presumed taxable until the owner or owner's representative has declared to the Department that the charges for transient accommodations at the park qualify for exemption.

2. Once the owner or owner's representative has declared to the Department that the rental charges for transient accommodations at the camp or park are exempt, the owner or owner's representative is required to make a redetermination of the taxable status of the camp or park at the end of the owner's accounting year. To make this determination, the owner must use a consecutive three month period with at least one month in the accounting year. In the event that charges for transient accommodations at an exempt camp or park no longer qualify for exemption, the owner or owner's representative must notify the Department no later than the 20th day of the first month of the owner's next succeeding accounting year that the rental charges for transient accommodations at the camp or park have become taxable. The rental charges for transient accommodations at that camp or park will become taxable on the first day of the owner's next succeeding accounting year.

3. The Department prescribes Form DR-72-2, Declaration of Taxable Status-Trailer Camps, Mobile Home Parks, and

Recreational Vehicle Parks, incorporated by reference in Rule 12A-1.097, F.A.C., as the form to be used for the purposes of declaring the rental charges for transient accommodations at a trailer camp, mobile home park (except mobile home lots regulated under Chapter 723, F.S.), or recreational vehicle park exempt and notifying the Department at the time of annual redetermination that the rental charges for transient accommodations at an exempt camp or park have become taxable. This form is not required to be filed with the Department when the owner or owner's representative of an exempt camp or park determines at the time of annual review that the rental charges for transient accommodations continue to qualify for exemption.

4. Mobile home lots regulated under Chapter 723, F.S., are exempt from tax on the lot rental amount. Owners and owners' representatives of mobile home lots regulated under Chapter 723, F.S., are not required to file Form DR-72-2 with the Department to declare the mobile home lot exempt or required to make an annual redetermination of the taxable status of the lot.

5. Any person who rents or leases transient accommodations at an exempt camp or park is not required to pay tax on rental charges for transient accommodations as long as the park or camp remains exempt, even when the transient accommodations are rented or leased for periods of six months or less.

(10) FULL-TIME STUDENTS.

(a) Full-time students enrolled in an institution offering postsecondary education who reside in transient accommodations are exempt from the taxes imposed on transient accommodations. For the purpose of this rule, a "full-time student" is one taking that number of hours or courses considered by his or her educational institution to constitute full-time enrollment. This exemption applies if either husband or wife is a full-time student.

(b) A written declaration of an appropriate official of the student's institution reflecting that the student named in the declaration is a full-time student of the institution is proof of the student's full-time enrollment. The owner or owner's representative is required to maintain the written declaration in its records.

(c) The following is a suggested written declaration to be completed and presented by the full-time student to the owner or the owner's representative of the transient accommodation.

The undersigned hereby declares that _____ (Student's name) is currently enrolled as a full-time student at _____ (Name of educational institution), a postsecondary educational institution.

Dated this _____ day of _____, 19____

_____ (Name of educational institution)

By _____
(Signature of appropriate official)

As _____
(Title of appropriate official _____)

(11) MILITARY PERSONNEL ON ACTIVE DUTY.

(a) Rental charges or room rates paid by military personnel currently on active duty and present in the community under official orders are exempt. This includes rental charges or room rates for transient accommodations paid by military personnel while traveling to a destination designated by their official orders. The exemption does not include rental charges or room rates for transient accommodations paid by military personnel that are in the community, but are not under official orders to be present in the community.

(b) To qualify for this exemption, military personnel must present either of the following documents to the owner or owner's representative of the transient accommodation:

1. A copy of the official orders supporting the active duty status of the military personnel and making it necessary to occupy the transient accommodation; or

2. A copy of an overflow certificate issued to military personnel on active duty status by any unit of the U.S. Armed Services.

(12) RENTALS BY GOVERNMENTAL UNITS.

(a) Any city, county, municipality, or other political subdivision of the State that rents, leases, lets, or grants license to others to use transient accommodations is required to collect the applicable tax due on the rental charges or room rates for such accommodations.

(b) Any person who rents, leases, lets, or grants license to others to use transient accommodations on land leased from the

federal government is required to collect the applicable tax due on the rental charges or room rates for such accommodations.

(c) Any person who contracts with the federal government to rent, lease, let, or grant licenses to others to use transient accommodations, such as at private flying schools or for detained aliens pending entry proceedings, is required to collect the applicable tax due on the rental charges or room rates for such accommodations.

(13) GOVERNMENTAL EMPLOYEES AND REPRESENTATIVES OF EXEMPT ORGANIZATIONS.

(a) Employees of the federal government or its agencies are exempt from tax on rental charges or room rates for transient accommodations, even though the employee may be reimbursed by the federal government or its agencies, only when:

1. The federal government or its agencies pays the rental charges or room rates directly to the owner or the owner's representative of the transient accommodations or reimburses the employee for the actual rental charges or room rates;

2. The employee does not use the transient accommodations for personal purposes; and

3. The employee provides the owner or the owner's representative of the transient accommodations with the proper documentation. See subsection 12A-1.038(4), F.A.C., for the proper documentation to be provided by the employee.

(b)1. Employees of governmental units other than the federal government or its agencies (i.e., state, county, city, or any other political subdivision of the State) and authorized representatives of organizations that hold a Consumer's Certificate of Exemption issued by the Department are exempt from tax on rental charges or room rates for transient accommodations only when:

a. The rental charges or room rates are billed directly to and paid directly by the governmental unit or the exempt organization;

b. The employee or representative does not use the transient accommodations for personal purposes; and

c. The employee or representative provides the owner or the owner's representative of the transient accommodations with proper documentation. See subsections 12A-1.038(3) and (4), F.A.C., for the proper documentation to be provided by the employee or representative.

2. Rental charges or room rates paid with personal funds of any individual representing an exempt organization or of any employee of a governmental unit, other than the federal government or its agencies, are subject to tax, even though the representative may receive an advance or reimbursement from the exempt organization or governmental unit.

(14) EXEMPTION FOR CONTINUOUS RESIDENCE.

(a) When any person has continuously resided at any transient accommodation for a period of longer than six months and has paid the applicable tax due on the rental charges or room rates for the first six months, that person is exempt from tax on the rental charges or room rates due for that transient accommodation after the first six months of the continuous rental period. When that person ceases to rent that transient accommodation, the exemption for continuous residence for that person at that accommodation no longer applies.

(b)1.a. When a number of transient accommodations within a multiple unit structure are rented to any one person or entity for its own use for periods longer than six months, the rental charges or room rates for the lowest number of transient accommodations continuously rented at that structure for periods longer than six months are exempt from tax, effective for those rental charges or room rates due for such accommodations after the first six months of the continuous rental period. To qualify for this exemption, the person or entity must pay the applicable tax due on the rental charges or room rates for the first six months of the continuous rental period and must rent the accommodations for periods longer than six continuous months.

b. Example: Company A provides hotel rooms to house its employees at a hotel. Because the number of employees needing a room varies each night, the number of rooms rented by Company A varies each night. However, Company A rents and pays the applicable tax due on at least 10 hotel rooms each night for a consecutive six month period. Beginning the seventh month of the continuous rental period, Company A is exempt from tax due on the rental charges or room rates for 10 rooms at that hotel as long as it pays the room rates for at least 10 rooms at that hotel. Any rental charges or room rates for additional rooms paid by Company A are subject to tax, until the rental charges or room rates for those rooms qualify for exemption.

2.a. Any person who enters into a bona fide written lease, as provided in subsection (15), to lease a specified number of transient accommodations at a multiple unit structure each night during the lease period for its own use, is exempt from tax due on the rental charges or room rates applicable to the specified minimum number of accommodations. If that person rents more than the specified number of accommodations stated in the lease, the provisions of subparagraph 1. apply.

b. Example: Company B enters into a bona fide written lease for one year with a hotel to lease at least 10 hotel rooms each night to house its employees. The lease requires that Company B pay the room rates for 10 rooms for the entire year, even when the rooms are not occupied. On several nights during the year, Company B rents more than 10 rooms at the hotel. Company B is exempt from tax on the room rates for 10 rooms during the entire one year lease period. The additional hotel rooms rented by Company B are

subject to tax, until the rental charges or room rates for those rooms qualify for exemption.

3. There is no requirement to lease or rent the same room or unit within a multiple unit structure each night or to occupy the rented or leased room or unit to qualify for the exemption described in this paragraph.

4. The provisions of this paragraph do not apply to transient accommodations that are rented or leased for the purpose of subleasing, subrenting, subletting, or licensing the accommodations to other persons.

(15) **BONA FIDE WRITTEN LEASES.**

(a) Transient accommodations that are leased under the terms of a bona fide written lease for periods longer than six months for continuous residence by the individual or entity leasing the transient accommodations to which the written lease applies are exempt. The exemption will not be allowed or disallowed based on the number of days in the rental period, but will be disallowed if the rental period is not longer than six "months," as defined in paragraph (b).

(b)1. For the purposes of this subsection, a "month" is defined as follows:

a. For leases commencing on the first day of a month, the term "month" means a calendar month.

b. For leases commencing on a day other than the first day of a month, the term "month" means the time period from any day of any month to the corresponding day of the next succeeding month, or if there is no corresponding day in the next succeeding month, the last day of the succeeding month.

2. To be considered a lease for periods longer than six months, a bona fide written lease agreement effective the first day of a month must run through the first day of the seventh consecutive month. For example, a lease agreement that is effective July 1, 1997 through January 1, 1998, will qualify as a lease for periods longer than six months.

3. To be considered a lease for periods longer than six months, a bona fide written lease agreement effective at some other date than the first day of a month must be in effect through the day after the corresponding day of the seventh consecutive month. For example, a lease agreement that is effective July 28, 1997 through January 29, 1998, will qualify as a lease for periods longer than six months.

(c) For the purposes of this subsection, a "bona fide written lease" is a written document that clearly demonstrates that the parties' intent is that the lessee will have the exclusive use or possession, or the right to the exclusive use or possession, of the transient accommodations to which the lease applies.

(d) The written lease must contain:

1. The length of time for which the transient accommodations are being occupied, including both the exact commencement and exact termination dates; and

2. A statement that the lessor is giving the lessee the right to complete and exclusive use or possession of the transient accommodations for the entire duration of the lease period.

(e) A "bona fide written lease" is executed in or with good faith, without deceit or fraud. The Department will examine the lease document, as well as all surrounding facts and circumstances, to determine the parties' objective intent at the time of execution of the lease. In examining the lease document, the Department will consider and be guided by the following lease contents:

1. Language that indicates the written document is a lease;

2. A sufficient description of the leased transient accommodations;

3. A statement that the lease contains the complete and sole agreement between the parties for occupying the transient accommodations;

4. A provision that the lessee will pay an agreed amount of rental charge or room rate;

5. A statement containing the due date, the frequency, and the remittance address for payment of each rental charge or room rate;

6. A statement specifying what conditions or acts will result in early termination of the lease, the rights and obligations of the parties upon the occurrence of the terminating conditions or acts, and any penalties that will result from early termination; and

7. The signatures of the named parties, or in the case of corporate parties, the signature of the authorized corporate representatives.

(f)1. A lease does not cease to be a bona fide written lease when the lessor or lessee has experienced a significant change in circumstances and the lessor releases the lessee, with or without penalty, from the obligations under the lease.

2. A lease does not cease to be a bona fide written lease when the lessor has evicted the lessee for violation of the lease agreement.

3. A lease does not cease to be a bona fide written lease if the lessor is in violation of a fire or safety code such that the lessee is

forced to move to another location.

4. For the purposes of this paragraph, the term "significant change in circumstances" means the occurrence of an event, not contemplated at the time of the signing of the lease, such as an illness, death, bankruptcy, significant change in business circumstances (e.g., long-term strike or the ceasing of doing business in the locality), loss of job, or job transfer, that would cause the lessor or lessee to suffer a hardship if the lessor or lessee were forced to honor the lease until its stated termination date.

(g) A "bona fide written lease" for periods longer than six months for continuous residence by the individual or entity leasing the transient accommodations to which the written lease applies will not be constituted when:

1. The lease contains a provision that would entitle the lessor of the leased transient accommodations to lease the accommodations back from the lessee during the lease period for the purpose of leasing the same accommodations to other lessees;

2. The lease contains a provision that would entitle the lessor of the leased transient accommodations to sublease, subrent, sublet, or license the accommodations to other persons for periods of six months or less;

3. The lease does not provide the lessee with the right to occupy the transient accommodations for the entire duration of the lease period;

4. The lease contains a provision that allows the lessee to cancel the lease, without penalty, at any time when the lessee has had no significant changes in circumstances; or

5. The lease contains a provision that would allow the lessee to avoid full payment of the stated amount of the rental charge or room rate.

(h)1. The Department will presume that the parties to the lease did not in fact intend to enter into a bona fide written lease for a period of more than six months for continuous residence when:

a. The leased transient accommodations are leased more than two times in a calendar year with each lease issued during that calendar year containing statements indicating that the lease period is for longer than six months; and

b. No lessee leased the transient accommodations for more than six months.

2. This presumption can be rebutted by documentary evidence (i.e., notarized statements, eviction documents, etc.) that provides, for each lease terminated prior to its stated termination date, that:

a. A significant change in circumstances of the lessee existed; or

b. The lessor evicted the lessee for cause.

(16) Rental charges or room rates will be considered by the Department as applying to the period in which they are required to be paid by the terms of the rental or lease agreement.

(17) When rental charges or room rates are collected in other than equal daily, weekly, or monthly amounts during the first six months of lease or rental period, the Department is authorized to reform for tax purposes a lease or rental contract/agreement so that equal consideration applies to each rental period during the first six months.

(18) Any taxes collected from a guest or tenant must be remitted to the proper taxing authority, regardless of how the taxes are collected or recorded by the entity providing the transient accommodations.

(19) RECORDS REQUIRED. Any person who collects rental charges or room rates for transient accommodations must maintain adequate records, including copies of all lease or rental agreements, duplicate copies of receipts issued for the payment of rental charges or room rates, and any exemption certificates until the tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Upon request, records must be made available to the Department.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 92.525(1)(b), 212.02(2), (10)(a)-(g), (16), 212.03(1), (2), (3), (4), (5), (7), 212.031, 212.04(4), 212.08(6), (7)(i), (m), 212.11(1), (2), 212.12(7), (9), (12), 212.13(2), 212.18(2), (3), 213.37, 213.756 FS. History-Revised 10-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, Amended 7-19-72, 4-19-74, 12-11-74, 5-27-75, 10-18-78, 4-11-80, 7-20-82, 1-29-83, 6-11-85, Formerly 12A-1.61, Amended 10-16-89, 3-17-94, 1-2-95, 3-20-96, 11-30-97, 7-1-99, 3-4-01(4), 3-4-01(2), (5), (14), 10-2-01, 8-1-02, 9-1-09.