AGENDA
FLORIDA DEPARTMENT OF REVENUE

Meeting Material Available on the web at:
http://dor.myflorida.com/dor/opengovt/meetings.html

MEMBERS
Governor Rick Scott
Attorney General Pam Bondi
Chief Financial Officer Jeff Atwater
Commissioner Adam H. Putnam

April 19, 2011

Contacts: **Lisa Vickers, Executive Director**
French Brown, Deputy Director, Technical Assistance & Dispute Resolution
(850-717-6309)
MaryAnn Murphy, Executive Asst. II
(850-717-7138)

1:00 P.M. CDT
Bay County Gov't Bldg.
Panama City, Florida

ITEM	SUBJECT	RECOMMENDATION

1. Respectfully request approval of the minutes of February 22, 2011.

(ATTACHMENT 1) **RECOMMEND APPROVAL**

2. Respectfully request approval and authority to publish Notice of Proposed Rule in the Florida Administrative Weekly for the following rule:

Timeshare Exchange Programs: propose amendment of transient accommodation rule relating to timeshare occupancy and timeshare exchange programs, consistent with amendments made to Section 212.03, F.S., by Chapter 2009-133, Laws of Florida. *[Rule 12A-1.061, Florida Administrative Code (F.A.C.)]*

(ATTACHMENT 2) **RECOMMEND APPROVAL**

3. Respectfully request adoption and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes, for the following rule:

Hotel Reward Points Programs: propose creation of rule relating to transactions occurring as part of a hotel reward points program, consistent with findings made in Report Number 2005-131 by the Senate Committee on Government Efficiency Appropriations. *[Rule 12A-1.0615, F.A.C.]*

(ATTACHMENT 3) **RECOMMEND APPROVAL**

4. Respectfully request adoption and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes, for the following rule:

Warrants and Liens List: propose creation of rule relating to the publication and maintenance of a list of taxpayers with outstanding tax warrants and liens.
[Rule 12-22.008, F.A.C.]

(ATTACHMENT 4) **RECOMMEND APPROVAL**

THE CABINET

STATE OF FLORIDA

Representing:

STATE BOARD OF ADMINISTRATION

DIVISION OF BOND FINANCE

DEPARTMENT OF REVENUE

DEPARTMENT OF VETERANS' AFFAIRS

ADMINISTRATION COMMISSION

BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND

The above agencies came to be heard before THE FLORIDA CABINET, Honorable Governor Scott presiding, in the Cabinet Meeting Room, LL-03, The Capitol, Tallahassee, Florida, on Tuesday, February 22, 2011, commencing at 9:00 a.m.

Reported by:
JO LANGSTON
Registered Professional Reporter
Notary Public

ACCURATE STENOTYPE REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
(850) 878-2221

ATTACHMENT #1

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

ADAM H. PUTNAM
Commissioner of Agriculture

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

* * *

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BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND
(Presented by HERSCHEL VINYARD)

GOVERNOR SCOTT: The next agenda is the Department of Revenue, presented by Lisa Vickers.

MS. VICKERS: Good morning.

GOVERNOR SCOTT: Good morning.

MS. VICKERS: Item 1 is to request approval of the minutes from the December 7, 2010 meeting.

GOVERNOR SCOTT: Is there a motion?

ATTORNEY GENERAL BONDI: Move to approve.

GOVERNOR SCOTT: Second?

CFO ATWATER: Second.

GOVERNOR SCOTT: Moved and seconded. Show Item 1 approved without objection.

MS. VICKERS: Item 2, request authority to publish notices of proposed rule-making for rules in four subject areas. The first area is the Florida Tax Credit Scholarship Program. In 2010 the Legislature expanded the types of taxes that could be eligible for credit to alcohol and beverage taxes, sales and use tax, for direct pay permits and severance taxes. And these rule amendments will reflect those updates to the rule.

The second area is the Manufacturing and Spaceport Investment Incentive Program. The 2010 Legislature implemented a program creating a refund of sales and use tax on eligible equipment

implemented by manufacturers of tangible personal property, spaceport or mining businesses.

The third area is related to a -- to correct an issue in our rule related to germicides used for sewage treatment. An exemption for certain chemicals was unintentionally dropped from that rule.

And the final area is the red light camera penalties electronic remittance. This rule provides the remittance procedures for counties, municipalities and clerks of court to remit those fees for further distribution by the State. We would request authority to publish notices of proposed rule-making so that we can hold hearings on those rules and receive public input.

GOVERNOR SCOTT: Any questions? Is there a motion?

ATTORNEY GENERAL BONDI: Move to approve.

GOVERNOR SCOTT: Second?

CFO ATWATER: Second.

GOVERNOR SCOTT: Moved and seconded. Show Item 2 approved without objection.

MS. VICKERS: Thank you.

GOVERNOR SCOTT: Thank you.

FLORIDA
DEPARTMENT OF REVENUE

Executive Director
Lisa Vickers

April 19, 2011

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Doug Darling, Chief of Staff/Cabinet Affairs Director
Rachel Goodson, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Cabinet Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Jim Boxold, Chief Cabinet Aide
Brooke Mcknight, Cabinet Aide

FROM: French Brown, Deputy Director, Technical Assistance and Dispute Resolution

SUBJECT: Requesting Approval to Hold Public Hearing on Proposed Rule – Timeshares

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Statement of HB 1565 (Chapter 2010-279, L.O.F.) Impact. No impact.

The Department has reviewed this proposed rule for compliance with HB 1565. The proposed rule likely will not have an adverse impact on small business, small counties, or small cities, and it is not likely to have an increased regulatory cost in excess of $200,000 within 1 year. Additionally, the proposed rule is not likely to have an adverse impact or increased regulatory costs in excess of $1,000,000 within 5 years.

What is the Department Requesting? Section 120.54(3)(a), F.S., requires the Department to obtain Cabinet approval to hold public hearings for the development of proposed rules. The Department therefore requests approval to publish a Notice of Proposed Rule in the Florida Administrative Weekly for proposed Rule 12A-1.061, F.A.C. (Timeshares).

ATTACHMENT #2

Timeshare Exchange Programs

Why is this proposed rule necessary?: The proposed rule amendment is necessary to provide guidance on the sales tax exemption for timeshare exchanges provided by Chapter 2009-133, L.O.F.

What does this proposed rule do?: Section 212.03, F.S., was amended by Chapter 2009-133, L.O.F., to provide that a payment made under a timeshare exchange program is a service charge and is not subject to tax. The proposed rule provides clarification that the various fees paid under a timeshare program, including an exchange program membership fee, an exchange fee, and an upgrade fee, are not subject to tax.

The statutory amendment also provides that a payment made for occupancy in a timeshare property in conjunction with a potential purchase of a timeshare interest (referred to as a "regulated short-term product") is subject to tax, unless such payment is applied to the purchase of a timeshare estate. The proposed rule provides that any tax due on such occupancy is due on the last day of occupancy.

Were comments received from external parties?: Rule workshops were held on June 24, 2010 and October 11, 2010. Comments in support of the rule were received from industry representatives. Written comments were also received from Pinellas County opposing the rule, arguing that timeshare exchanges are taxable.

Attached are copies of:

- Summary of the proposed rule, which includes:
  - Statements of facts and circumstances justifying the rule;
  - Federal comparison statement; and
  - Summaries of rule workshops
- Notice of Proposed Rule
- Rule text

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

AMENDING RULE 12A-1.061

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), pursuant to Section 212.03(1), F.S., as amended by Section 3, Chapter 2009-133, L.O.F., provide: (1) when consideration paid for the purchase of a timeshare, for the rental or occupancy of a timeshare, and for regulated short-term products is subject to tax; and (2) that consideration paid pursuant to an exchange program by a timeshare owner for the use or occupancy of an accommodation is not subject to tax.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), are necessary to include the provisions regarding timeshares provided in Chapter 2009-133, L.O.F. This law provides that timeshare exchanges and fees charged by a third party to facilitate a timeshare exchange are not subject to tax. The law also provides when fees charged to occupy and inspect a regulated short-term timeshare product are subject to tax. When in effect, this rule will provide for the taxability of the purchase of a timeshare interest, the rental of a timeshare accommodation, the occupancy pursuant to the

purchase of a regulated short-term product, and the fees charged by timeshare exchange programs.

FEDERAL COMPARISON STATEMENT

The provisions contained in this rule do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON JUNE 24, 2010

The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), were noticed for a rule development workshop in the Florida Administrative Weekly on May 28, 2010 (Vol. 36, No. 21, p. 2421). A rule development workshop was held on June 24, 2010, in Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida, commencing at 10:00 a.m. and concluding at 11:59 a.m., to allow members of the public to ask questions and make comments regarding the proposed changes.

PARTIES ATTENDING

For the Department of Revenue	MARSHALL STRANBURG, General Counsel MARK ZYCH, Director, Technical Assistance and Dispute Resolution TAMMY MILLER, Senior Attorney, Technical Assistance and Dispute Resolution
For the Public	TOM BELL, Interval International PAUL BOGDANSKI, Grant Thornton JIM ERVIN, Holland & Knight CHARLES JOHNSON, Marriott SARAH RICHARDSON, Pinellas County Attorney's Office JOYCE SUNDAY, Walton County Clerk's Office

VICKI WEBER, Hopping, Green and Sams
PATSY WILLBANKS, Okaloosa Clerk of the Circuit Court

WRITTEN COMMENTS

JASON GAMEL, American Resort Development Association
SARAH RICHARDSON, Pinellas County Attorney's Office

CLAUDIA L. RILEA, C.P.A., C.I.A., Orange County Comptroller's Office
ERIN SULLIVAN, C.F.C.A., C.P.M., Pinellas County Tax Collector's Office Courthouse

Proposed paragraphs (7)(c) and (d) of Rule 12A-1.061, F.A.C., Regulated Short-Term Products and Timeshare Exchange Programs

Mr. Jason Gamel, American Resort Development Association, submitted written comments, dated July 7, 2010, stating that he believed the proposed rule accurately reflects both the language and intent of HB 61 (2009). Mr. Gamel stated that his employer was actively involved in drafting and securing enactment of the bill and is therefore very familiar with both the language and intent of the bill. He stated that the plain language of the bill makes clear that a timeshare exchange is not subject to tax, unless monetary consideration is paid to the owner or to a third-party for the benefit of the owner.

Mr. Gamel proposed two minor changes to the proposed rule. First, Mr. Gamel suggested that the language in the proposed rule referring to the "occupancy of a regulated short-term product" be changed to "occupancy pursuant to a regulated short-term product," so as to be consistent with the statutes. Second, Mr. Gamel recommended including a statutory reference to Section 721.18, F.S., in connection with the term "timeshare exchange program," so as to limit the term in the proposed rule only to those programs that are regulated pursuant to Section 721.18, F.S.

Ms. Sarah Richardson, Pinellas County Attorney's Office, submitted written comments on behalf of the Pinellas County Tax Collector, dated July 8, 2010, stating her opinion that proposed paragraph (7)(d) of the proposed rule creates a wholesale exemption for all portions of a timeshare exchange that is inconsistent with the statutes. Ms. Richardson stated her opinion that the statutory language would cause at least some timeshare exchanges to be taxable events.

Specifically, Ms. Richardson stated that an upgrade fee paid by a person requesting a timeshare exchange is taxable. Ms. Richardson provided suggested language that could replace the current proposed rule language. Ms. Richardson also stated that an upgrade fee that went to an exchange program and not to the owner of the other property would not be taxable. Finally, Ms. Richardson stated her opinion that the Legislature did not intend for HB 61 (2009) to exclude upgrade fees from taxation. Ms. Richardson provided that the House of Representatives staff analysis of the bill stated that "[t]ransactions that are not taxable under the bill's provisions include timeshare exchanges, fees charged by a third party to facilitate a timeshare exchange, and inspection packages." Ms. Richardson stated that an upgrade fee charged in addition to the normal fee to facilitate a timeshare exchange is not exempt from taxation based on the staff analysis. Ms. Richardson also stated that the staff analysis included a description of taxable transactions and that the analysis included "short-term occupancy of a timeshare unit in a manner similar to that of a hotel, motel, resort, or other public lodging facility stay" within those descriptions.

Ms. Claudia Rilea, Orange County Comptroller's Office, submitted written comments dated July 30, 2010, stating that her initial interpretation is that the "boot" is included in the total consideration required to be paid for the right to occupy the unit. The reward points rule requires

tax to be paid on any additional amounts paid by the guest. It is important to consider the unintended consequences of the interpretation of this issue.

Erin Sullivan, C.F.C.A., C.P.M., Pinellas County Tax Collector's Office Courthouse, provided written comment, dated June 24, 2010, regarding the use of "points" for the timeshare industry. These points obviously have a value. When earned "points" are used to make a purchase, the use of the points should not result in receiving a tax exemption. The taxes should be collected and remitted, unless specifically exempt under the statutes.

Change to Proposed Paragraph (7)(c)
Proposed paragraph (7)(c) will be changed from "consideration paid for the occupancy of a regulated short-term product" to "consideration paid for occupancy pursuant to a regulated short-term product."

No change to Proposed Paragraph (7)(d)
Proposed paragraph (7)(d) will not be changed to reference s. 721.18, F.S. Section 212.03(1), F.S., provides an exemption for timeshare exchange programs specifically, referencing the definition of an "exchange program" as found in s. 721.05, F.S. Therefore, any attempt to define the term in the rule by reference to s. 721.18, F.S., would be both unnecessary and in derogation of the statutes.

Proposed paragraph (7)(d) will also not be changed to require tax to be remitted on any upgrade fee or "boot" paid for a timeshare exchange. Section 212.03(1), F.S., provides that tax is due when a timeshare owner's guest pays monetary consideration to the timeshare owner or to a third party for the benefit of the owner. Under a timeshare exchange program, both parties must be timeshare owners, and neither party is considered the "guest" of the other; therefore, neither party would ever fall under the statutory provision when it pays an upgrade fee or "boot" as part of a timeshare exchange.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.061, F.A.C.:

Proposed Paragraph (7)(c) of Rule 12A-1.061, F.A.C., Regulated Short-term Products

Ms. Vicki Weber, Hopping, Green and Sams, recommended a small change to paragraph (7)(c) of the proposed rule. As presented at the workshop, the proposed rule stated "occupancy of a regulated short-term product." Ms. Weber suggested this phrase be changed to "occupancy

pursuant to a regulated short-term product," because an individual does not occupy a regulated short-term product.

Change to Proposed Paragraph (7)(c)
Proposed paragraph (7)(c) will be changed from "consideration paid for the occupancy of a regulated short-term product" to "consideration paid for occupancy pursuant to a regulated short-term product."

Proposed Paragraph (7)(d) of Rule 12A-1.061, F.A.C., Timeshare Exchange Program

Mr. Tom Bell, Interval International, addressed the phrase in the proposed rule stating that an owner requesting a timeshare exchange "will not request the use of a specific timeshare unit." Mr. Bell recommended changing this phrase to "will generally not request. . . ."

Mr. Bell also addressed the term "exchange program." Mr. Bell stated that Section 721.05, F.S., contains a definition of "exchange program," but he recommended that the term be defined as "a program filed with the Department of Business and Professional Regulation pursuant to Section 721.18, F.S." Mr. Bell stated that, while Section 721.18, F.S., clearly implied approval by the Department of Business and Professional Regulation, it did not clearly say a program must be approved; he therefore recommended the use of the term "filed" instead of "approved," as stated in his written comments submitted prior to the workshop. Mr. Bell stated that he believed it was simpler to define the term "exchange program" in this manner, instead of using a cross-reference to the definition contained in Section 721.05, F.S.

Ms. Richardson stated her opinion that the new law did not provide an exemption for an upgrade fee paid as part of a timeshare exchange and that the proposed rule departed from the plain language of the statute. Ms. Richardson stated that additional consideration paid for an improved unit ("boot") should be taxed.

Ms. Weber stated that "boot" would only be taxed if it went to the benefit of the owner, and she referred to the specific language of the statute that addressed this issue. Ms. Richardson and Ms. Weber then discussed what the statute stated. Ms. Richardson stated that she read the statute to mean that a guest who does not pay to use the timeshare would not be subject to tax. She stated that the starting point was the statute, and the taxable point is consideration paid by the guest. Ms. Weber reiterated her opinion that the intent of the statute was to find no taxable privilege when an owner or owner's guest occupies a timeshare, unless the guest pays consideration to the owner or to a third party for the benefit of the owner.

Ms. Richardson asked if the consideration that went to the timeshare exchange program and not to the owner was simply profit to the exchange program. Ms. Weber stated that she believed the statute to read that any occupancy of a timeshare by a timeshare owner through a timeshare exchange was not a privilege subject to tax. Ms. Richardson gave her opinion that an upgrade fee is consideration for the occupancy of a unit and should be taxed. Ms. Weber stated that the proper beginning point was not what was the consideration, but whether there was a taxable occupancy that was a privilege subject to tax, and that the statute provided that the use of a timeshare by a timeshare owner under a timeshare exchange was not a taxable privilege.

Mr. Marshall Stranburg asked Ms. Weber for clarification of whether an upgrade fee that went to the timeshare owner would be taxable consideration. Ms. Weber stated that the statute contained two different situations: a timeshare owner occupying the property and a timeshare owner's guest occupying the property. She believes the statute provides that a timeshare owner's occupancy of the property is not a taxable privilege, but that the occupancy of the property by a timeshare owner's guest is a taxable privilege if the guest pays consideration to the owner or to a third party for the benefit of the owner.

Ms. Tammy Miller, Department of Revenue, and Mr. Stranburg asked Ms. Weber to clarify that a person requesting a timeshare exchange must be timeshare owner, so that a timeshare owner's guest would never occupy a timeshare unit under an exchange program. Ms. Weber agreed with the clarification. Ms. Richardson stated that, under a timeshare exchange, you have two owners, one of which is requesting an exchange and one of which owns the property being requested. Ms. Richardson asked if the owner requesting the exchange could be considered to be the other owner's guest, because that person is not the owner of the unit he or she will occupy. She stated that if the owner requesting the exchange paid an upgrade fee, then that fee should be taxable as consideration. Ms. Weber responded that the statutory language did not include a provision stating that a timeshare owner must occupy his or her own unit.

No change to Proposed Paragraph (7)(d)
Proposed paragraph (7)(d) will not be changed to reference s. 721.18, F.S. Section 212.03(1), F.S., provides an exemption for timeshare exchange programs specifically, referencing the definition of an "exchange program" as found in s. 721.05, F.S. Therefore, any attempt to define the term in the rule by reference to s. 721.18, F.S., would be both unnecessary and in derogation of the statutes.

Proposed paragraph (7)(d) will also not be changed to require tax to be remitted on any upgrade fee paid for a timeshare exchange. Section 212.03(1), F.S., provides that tax would be due when a timeshare owner's guest pays monetary consideration to the timeshare owner or to a third party for the benefit of the owner. Under a timeshare exchange program, both parties must be timeshare owners, and neither party is considered the "guest" of the other; therefore, neither party would ever fall under the statutory provision when it pays an upgrade fee as part of a timeshare exchange.

SUMMARY OF PROPOSED CHANGES TO RULE 12A-1.061, F.A.C.

Proposed paragraph (7)(c) of proposed Rule 12A-1.061, F.A.C., will be changed from "consideration paid for the occupancy of a regulated short-term product" to "consideration paid for occupancy pursuant to a regulated short-term product."

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 11, 2010

The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), were noticed for a rule development workshop in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, p. 4559-4560). A rule development workshop was held on October 11, 2010, in Room 1220, Building Two, 2450 Shumard Oak Boulevard, Tallahassee, Florida, commencing at 2:30 p.m. and concluding at 3 p.m., to allow members of the public to ask questions and make comments regarding the proposed changes.

PARTIES ATTENDING

For the Department of Revenue	TAMMY MILLER, Senior Attorney, Technical Assistance and Dispute Resolution SARAH WACHMAN, Senior Management Analyst, General Counsel
For the Public	TOM BELL, Interval International SAMANTHA REHTORIK, Liberty Partners of Tallahassee, LLC CHRIS STEWART, American Resort Development Association VICKI WEBER, Hopping, Green and Sams
WRITTEN COMMENTS	SARAH RICHARDSON, Pinellas County Attorney's Office

Proposed paragraph (7)(d) of Rule 12A-1.061, F.A.C., Timeshare Exchange Programs

Ms. Sarah Richardson, Pinellas County Attorney's Office, submitted written comments on behalf of the Pinellas County Tax Collector, dated October 8, 2010, reiterating her opinion that a timeshare exchange is a taxable event, particularly when the exchange involves the payment of an upgrade fee. Ms. Richardson stated that the payment of an upgrade fee for a more

valuable property constitutes additional consideration, even if a one-for-one exchange between two timeshare owners was assumed not to be an actual payment of consideration.

No change to Proposed Paragraph (7)(d)
Proposed paragraph (7)(d) will also not be changed to require tax to be remitted on any upgrade fee paid for a timeshare exchange. Section 212.03(1), F.S., provides that tax is due when a timeshare owner's guest pays monetary consideration to the timeshare owner or to a third party for the benefit of the owner. Under a timeshare exchange program, both parties must be timeshare owners, and neither party is considered the "guest" of the other; therefore, neither party would ever fall under the statutory provision when it pays an upgrade fee or "boot" as part of a timeshare exchange. Comments regarding the payment of an exchange fee to a timeshare owner outside an exchange program are not a part of the scope of this rulemaking. This rulemaking is limited to including the amendments made to s. 212.03, F.S., by Section 3, Chapter 2009-133, L.O.F.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.061, F.A.C.:

Proposed Paragraph (7)(d) of Rule 12A-1.061, F.A.C., Timeshare Exchange Program

Ms. Victoria Weber, Hopping, Green and Sams, stated that the statute was clear that an occupancy pursuant to an exchange program is not taxable. Ms. Weber agreed with what she believed had been Ms. Richardson's statement in her written comments of July 8, 2010, that an upgrade fee paid to an exchange program and not to a timeshare owner is also not taxable. Ms. Weber stated that an exchange fee paid to a timeshare owner would be taxable. Ms. Weber suggested that the proposed rule be amended to clarify that an upgrade fee is not taxable if paid to an exchange program and not to a timeshare owner.

Mr. Tom Bell, Interval International, stated his opinion that no program existed in which a timeshare owner requesting an exchange would pay any money to the owner of the unit to be received in the exchange. Mr. Bell also stated his opinion that no program existed in which any money paid by a timeshare owner requesting an exchange was paid for the benefit of the other timeshare owner. Mr. Chris Stewart, American Resort Development Association, concurred with Mr. Bell's statements.

Change to Proposed Paragraph (7)(d)
Proposed sub-subparagraph (7)(d)2.a. has been changed to clarify that consideration paid for the use or occupancy of an accommodation in a timeshare property by a timeshare owner to an exchange program is not subject to tax. The example contained in proposed sub-subparagraph (7)(d)2.b. will be changed to clarify that the upgrade fee is paid to the exchange program.

Proposed paragraph (7)(d) will not be changed to require tax to be remitted on any upgrade fee paid for a timeshare exchange. Section 212.03(1), F.S., provides that tax would be due when a timeshare owner's guest pays monetary consideration to the timeshare owner or to a third party for the benefit of the owner. Under a timeshare exchange program, both parties must be timeshare owners, and neither party is considered the "guest" of the other; therefore, neither party would ever fall under the statutory provision when it pays an upgrade fee as part of a timeshare exchange. Comments regarding the payment of an exchange fee to a timeshare owner outside an exchange program are not a part of the scope of this rulemaking. This rulemaking is limited to including the amendments made to s. 212.03, F.S., by Section 3, Chapter 2009-133, L.O.F.

SUMMARY OF PROPOSED CHANGES TO RULE 12A-1.061, F.A.C.

Proposed subparagraph (7)(d)2. of proposed Rule 12A-1.061, F.A.C., has been changed to clarify that consideration paid for the use or occupancy of an accommodation in a timeshare property by a timeshare owner to the exchange program is not subject to tax.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE NO: RULE TITLE:

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

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), is to include the provisions regarding timeshares provided in Chapter 2009-133, L.O.F. This law provides that timeshare exchanges and fees charged by a third party to facilitate a timeshare exchange are not subject to tax. The law also provides when fees charged to occupy and inspect a regulated short-term timeshare product are subject to tax. When in effect, this rule will provide for the taxability of the purchase of a timeshare interest, the rental of a timeshare accommodation, the occupancy pursuant to the purchase of a regulated short-term product, and the fees charged by timeshare exchange programs.

SUMMARY: The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), pursuant to Section 212.03(1), F.S., as amended by Section 3, Chapter 2009-133, L.O.F., provide: (1) when consideration paid for the purchase of a timeshare, for the rental or occupancy of a timeshare, and for regulated short-term products is subject to tax; and (2) that consideration paid to an exchange program by a timeshare owner for the use or occupancy of an accommodation is not subject to tax.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The agency has determined that this rule will not have an adverse impact on small business. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to

provide a proposal for a lower-cost regulatory alternative, must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 92.525(1)(b), 119.071(5), 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.

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: [To be determined upon approval.]

PLACE: [To be determined upon approval.]

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850) 617-8346. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800) 955-8770 (Voice) and (800) 955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tammy Miller, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-7105.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

AMENDING RULE 12A-1.061

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

(1) through (3) No change.

(a) through (g) No change.

(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. through 13. No change.

~~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., is rental charges or room rates and is subject to tax.~~

14.~~15~~. No change.

(4) through (6) No change.

(7) TIMESHARES.

(a) Purchase of a timeshare interest.

1. Consideration paid for the purchase of a timeshare estate, as defined in Section 721.05, F.S., is not rent and is not subject to tax.

2. Consideration paid for the purchase of a timeshare license, as defined in Section

721.05, F.S., is rent and is subject to tax.

(b) Rental of a timeshare accommodation. Consideration paid for the use or occupancy of an accommodation in a timeshare property is rent and is subject to tax. Consideration paid for a regulated short-term product or a timeshare exchange is addressed below.

(c) Regulated short-term products. Consideration paid for occupancy pursuant to a regulated short-term product, as defined in Section 721.05, F.S., is rent and is subject to tax, unless the consideration paid is applied to the purchase of a timeshare estate. Tax is due on the last day of occupancy pursuant to the regulated short-term product.

(d) Timeshare exchange programs.

1. A typical timeshare exchange program allows timeshare owners the right to deposit their timeshares into the exchange program pool. After depositing his or her timeshare into the exchange program pool, an owner may request the use of a different timeshare. An owner making a request will specify the type of unit desired (*e.g.*, one-bedroom, oceanfront) and the location at which he or she would like to stay (*e.g.*, Honolulu, Cancun, Miami), but will generally not request the use of a specific timeshare unit. A timeshare owner who joins an exchange program pays a membership fee to be a part of the exchange program. An owner also pays an exchange fee to request an exchange of a timeshare under the program. The requesting owner may also pay an upgrade fee if the exchange program determines that the requesting owner's timeshare is of a lesser value than the timeshare being requested.

2.a. Consideration paid for the use or occupancy of an accommodation in a timeshare property by a timeshare owner to an exchange program is not subject to tax.

b. Example: Mr. Smith purchases a two-bedroom timeshare in Orlando and becomes a member of an exchange program. Mr. Smith pays an annual membership fee of $500 to be a

member of the exchange program, which must be paid whether or not Mr. Smith requests the use of another timeshare from the exchange program pool. Mr. Smith decides to vacation in Miami, and he submits an exchange request to the exchange program. As part of his exchange request, Mr. Smith specifically requests a four-bedroom timeshare unit. Mr. Smith pays a $99 exchange fee and a $250 upgrade fee to the exchange program for the four-bedroom unit. No tax is due on the membership fee, the exchange fee, or the upgrade fee paid by Mr. Smith.

(7) through (19) Renumbered (8) through (20) No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 92.525(1)(b), 119.071(5), 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, 6-28-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tammy Miller, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-7105.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: [To be determined.]

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: [To be determined.]

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Rule Development was published in the Florida Administrative Weekly on May 28, 2010 (Vol. 36, No. 21, pp. 2421-2422). A rule development workshop was held June 24, 2010. Comments were received, and changes were made to the proposed rule text. A Notice of Rule Development Workshop was published in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, pp. 4559-4560). A rule development workshop was held October 11, 2010. Comments were received, and changes were made to the proposed rule text.

FLORIDA
DEPARTMENT OF REVENUE

Executive Director
Lisa Vickers

April 19, 2011

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Doug Darling, Chief of Staff/Cabinet Affairs Director
Rachel Goodson, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Cabinet Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Jim Boxold, Chief Cabinet Aide
Brooke Mcknight, Cabinet Aide

FROM: French Brown, Deputy Director, Technical Assistance and Dispute Resolution

SUBJECT: Requesting Adoption and Approval to File and Certify Proposed Rule – Hotel Reward Points Programs

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Statement of HB 1565 (Chapter 2010-279, L.O.F.) Impact. No impact.

The Department has reviewed this proposed rule for compliance with HB 1565. The proposed rule likely will not have an adverse impact on small business, small counties, or small cities, and it is not likely to have an increased regulatory cost in excess of $200,000 within 1 year. Additionally, the proposed rule is not likely to have an adverse impact or increased regulatory costs in excess of $1,000,000 within 5 years. The Department received a good faith written proposal for a lower cost regulatory alternative and has prepared a Statement of Regulatory Costs in response.

What is the Department Requesting? The Department requests final adoption of proposed Rule 12A-1.0615, F.A.C. (Hotel Reward Points Programs), and approval to file and certify it with the Secretary of State under Chapter 120, F.S.

ATTACHMENT #3

Hotel Reward Points Programs

Why is this proposed rule necessary?: The proposed rule reflects the findings of the Senate Committee on Government Efficiency Appropriations in Report Number 2005-131, "Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program." Both the hotel industry and numerous counties have requested guidance from the Department on these transactions.

What does this proposed rule do?: The proposed rule is being created to provide clarification regarding the application of Florida tax to transactions occurring under hotel rewards points programs. The proposed rule provides that tax is not due from a hotel guest when the guest exchanges reward points for an accommodation. The proposed rule provides that a hotel must compare the total contributions made to and the total reimbursements received from a reward points program in a calendar year. Tax will be due on a percentage of reimbursements received in the next calendar year if the total reimbursements received in the prior calendar year exceeded the total contributions made in the same year, because tax would have been previously paid and remitted on the contribution amounts. The proposed rule also provides the method to be used in a hotel's initial period of participation in a reward points program. Definitions are provided and the proposed rule includes recordkeeping requirements.

Were comments received from external parties?: A public meeting was held on April 2, 2004, to allow members to comment on the proper taxation of hotel reward points programs. Rule development workshops were held on September 19, 2006 and October 13, 2009. Comments were received from the industry and from representatives of several counties at the public meeting and both workshops. On September 28, 2010, the Governor and Cabinet approved the Department's request to publish a Notice of Proposed Rule and to conduct a rule hearing. Rule hearings were held on November 2, 2010, and February 8, 2011, and comments were received supporting the rule from the hotel industry and from Orange County, the largest tourism county in the state. Comments were also received from Pinellas County opposing the rule, arguing that sales tax is due from a hotel guest when the guest exchanges his or her reward points for an accommodation.

Attached are copies of:

- Summary of the proposed rule, which includes:
  - Statements of facts and circumstances justifying the rule;
  - Federal comparison statement; and
  - Summaries of meetings, workshops, and hearings
- Rule text with notices of change incorporated
- Statement of Estimated Regulatory Cost

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

CREATING RULE 12A-1.0615

SUMMARY OF PROPOSED RULE

The proposed creation of Rule 12A-1.0615, F.A.C. (Hotel Reward Points Programs): (1) provides that the rule will govern the taxation of transactions between hotel reward points program administrators and hotels within the program; (2) provides that no tax is to be collected from a member of a program when the member uses a certificate or confirmation number and is provided a room at no charge; (3) defines the terms “hotel,” “reimbursements,” and “contributions”; (4) provides that tax is due when a hotel receives more in reimbursements from the program fund than it paid in contributions to the program fund in the prior calendar year; (5) provides the calculation of taxable reimbursements for a hotel's initial twelve months of participation in a program and for each calendar year subsequent to the initial year of operation, including examples of the calculations; and (6) provides the recordkeeping requirements of hotels participating in a reward points program.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Rule 12A-1.0615, F.A.C. (Hotel Reward Points Programs), is being created to provide for the application of Florida tax in situations involving hotel reward points programs within the transient rentals industry that reflects the findings of Report Number 2005-131, “Application of

the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program," issued by the Senate Committee on Government Efficiency Appropriations. This rule sets forth when transient lodging accommodations provided to reward points programs members will be subjected to Florida's taxes on those accommodations, including the state sales tax, local surtax, and any locally-imposed convention development tax, tourist development tax, tourist impact tax, and municipal resort tax. This rule also sets forth when transactions between the administrator of a hotel reward points program and the hotel participating in the program are subject to tax.

FEDERAL COMPARISON STATEMENT

The provisions contained in this rule do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF PUBLIC MEETING

HELD ON APRIL 2, 2004

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a public meeting in the Florida Administrative Weekly on March 26, 2004 (Vol. 30, No. 13, p. 1307). A public meeting was held on April 2, 2004, at the Disney/SBA National Entrepreneur Center, located at 315 E. Robinson Street 100, Training Room II, Orlando, Florida, to allow members of the public to ask questions and make comments regarding the proper taxation, if any, of hotel reward points programs.

PARTIES ATTENDING

For the Department of Revenue	JEFF KIELBASA, Deputy Executive Director MARSHALL STRANBURG, Deputy General Counsel, Office of the General Counsel LINDA BRIDGES, Revenue Program Administrator, Technical Assistance and Dispute Resolution GARY GRAY, Tax Law Specialist, Technical Assistance and Dispute Resolution ALLEN ADAMS, Department of Revenue BECKY BRUSHWOOD, Department of Revenue CARMEN ROSAMONDA, Department of Revenue
For the Public	CATHY ADRID, Lake County Tax Collector LINDA BONNETT, Sarasota County Tax Collector EDWARD BROWN, Bay County Clerk of the Courts USHER LARRY BROWN, Orange County Comptroller ROBERT BURTON, St. Johns County KAYE COLLIE, General Counsel, Orange County JERRY CRANDALL, O.C.C.C./Bus. DAVE CRUZ, Broward County CHRISTOPHER DAWKINS, Deputy Director of County Audit, Orange County Comptroller TOM DRAGE, County Attorney, Orange County ANNE ROSE FARR, Tourist Tax Administrator, Martin County Tax Collector JACK FOUTS, Polk County Tax Collector ERIC GASSMAN, Director of Financial Management, Orange County JESSICA GIL, Monroe County YASMI GOVIN, Broward County SCOTT GROBERSKI, Manager, Grant Thornton, L.L.P. MARTHA O. HAYNIE, Orange County Comptroller ARTHUR E. HEINTZ, Supervisor/Auditor, Volusia County KENNETH HELMS, Manager – Sales Property Tax, Intercontinental Hotels Group LARRY HENRICKS, Orlando Orange County CVG DANISE HENRIQUE, Monroe County Tax Collector LIZ KLABER, Sarasota County Tax Collector BARBARA KUMBSKY, Senior Revenue Auditor, Palm Beach County ALEX LASKOWSKI, Grant Thornton, L.L.P. BRIAN LEWIS, Senior Review Officer, Orange County Comptroller SCOTT MCALISTER, Hillsborough County

LILA MCHENRY, Assistant County Attorney, Orange County
JOE MILLIKEN, Brevard County Tax Collector
DIANE NELSON, Tax Collector, Pinellas County
CAROL PARKER, Florida Hotel & Motel Association
JERRY RHODES, Orange County Comptroller
CLAUDIA RILEA, Audit Supervisor, Orange County Comptroller
GRETA ROWLEY, St. Lucie County Tax Collector
FRANK SCHNEIDER, Audit Manager, Osceola County
SUE SINQUEFIELD, Auditor, Manatee County Tax Collector
GARY SMITH, Florida Hotel & Motel Association
J. CARL SMITH, Orange County Comptroller
ALBERT SORRELL, St. Lucie County Tax Collector
KEITH STAATS, Director, Grant Thornton, L.L.P.
JARELL STINTON, Manatee County Tax Collector
ERIN SULLIVAN, Chief Tax Auditor, Pinellas County Tax Collector
JOE TEDDER, Polk County Tax Collector
WILLIAM CARLOS THOMAS, Chief Deputy Tax Collector, Pinellas County
BILL VAN ANTWERP, Director Lodging Tax, Marriott International
TOM WAITS, President and CEO, Florida Hotel & Motel Association
STEPHAN ZYRICKY, Hillsborough County

WRITTEN COMMENTS

LINDA K. BRONGEL, Hyatt Hotels Corporation
USHER L. BROWN, Brown, Salzman, Weiss and Garganese, P.A.
RICHARD T. CROTTY, Orange County Chairman
ALEX LASKOWSKI, Grant Thornton LLP
DIANE NELSON, Pinellas County Tax Collector
FRANK SCHNEIDER, Osceola County Audit Manager
KEITH STAATS, Grant Thornton, LLP

Ms. Linda K. Brongel, Hyatt Hotels Corporation, submitted written comments, dated May 7, 2004, stating the differences between her company's reward programs and those discussed at the meeting. She stated that her company's program does not permit members to exchange points for merchandise; there is no market for the company's reward points; points may only be redeemed by members of the program; and the sale or barter of points is prohibited. Ms. Brongel did not agree that there is consideration for a room when an award is redeemed by a

guest. She stated that the points have no value to anyone outside the program and are akin to a coupon. Ms. Brongel provided information relating to the transaction between the hotel and the reward point program. An example was provided of a room costing $100. When a reward point guest stayed at the hotel, the guest paid $100 for the room and paid tax on $100. The full amount of tax was remitted. The hotel retained $96 and remitted $4 to the reward point program. When the guest redeems points for a free room, the hotel is paid an agreed amount from the fund. The monies paid from the fund have already been taxed at the time the points were earned. The fund is not a separate legal entity and the transfer from the fund to the hotel has no legal significance. The hotel has received its own money back in a non-taxable transaction. Ms. Brongel also provided an alternative argument. She stated that the $4 could be viewed as a payment by the guest to the reward point program and not to the hotel for the occupancy of the room. Therefore, the guest only paid $96 for the room and only $96 should have been subject to tax. When the hotel receives payment from the fund for the redeemed points, the hotel would receive consideration from the guest by means of their prior payment into the fund and that amount would then be taxable to the guest.

Mr. Usher Brown, Brown, Salzman, Weiss & Garganese, P.A., submitted written comments, dated April 7, 2004, reiterating his opinion that reward points exchanged by a reward point member for an accommodation are subject to tax. Mr. Brown had previously issued a letter of opinion to Ms. Martha Haynie, Orange County Comptroller, and Ms. K. Kaye Collie, General Counsel, Orange County Comptroller, on April 1, 2004, setting out his position on the issues. That letter was the basis for his presentation at the meeting. His letter of April 7, 2004, addressed the analogy of a manufacturer's coupon that was presented at the meeting and provided case law relevant to Mr. Brown's discussion of an agency relationship. Mr. Brown stated that the analogy

to a manufacturer's coupon was erroneous and relied on Technical Assistance Advisement 95A-011 in support of his position.

Mr. Richard T. Crotty, Orange County Chairman, submitted written comments, dated April 22, 2004, stating that the substance of his opinion regarding the taxability of reward point programs is discussed in the legal opinion of Mr. Usher Brown. He stated his opinion that the Department of Revenue's determination in this matter may have consequences outside the scope of reward point transactions, including such transactions as third-party Internet bookings, third-party timeshare exchanges, and any other transaction where the final consideration is not paid directly by the guest at the place of lodging.

Mr. Alex Laskowski, Grant Thornton LLP, submitted written comments, dated May 10, 2004, reiterating his opinion that reward points exchanged by a reward point member for an accommodation are not subject to tax. Mr. Laskowski addressed the definitions of "guest" and "public lodging establishment," and concluded that the central reservation system did not fall within either definition. He stated that the guest redeems points through the central reservation system; therefore, there is no consideration between the guest and the hotel. Mr. Laskowski then addressed the issue of whether the reward points constitute consideration and concluded that the points have no value and the redemption of points can therefore not be classified as consideration for an accommodation. Mr. Laskowski addressed whether the reimbursement or credit received by a hotel from the central program fund constituted consideration or relief from debt. He concluded that the reimbursement or credit was not consideration or a relief from debt. Finally, Mr. Laskowski referenced three previously issued Letters of Technical Advice that had concluded that the redemption of reward points by a guest was not taxable.

Ms. Diane Nelson, Pinellas County Tax Collector, submitted written comments, dated April 8, 2004, stating that Ms. Sara Richardson, Assistant Pinellas County Attorney, had reviewed the written opinion of Mr. Usher Brown and concurred in Mr. Brown's opinion that there is consideration between a reward point member and a hotel. She stated her concern that some hotels appeared to have stopped remitting tax on reward programs, and she asked if the hotels would be subject to back taxes, penalties, and interest if the Department of Revenue issued a Technical Assistance Advisement on the issue.

Mr. Frank Schneider, Osceola County Audit Manager, submitted written comments, dated April 23, 2004, stating that the Osceola County Commission Auditor's Office has reviewed the taxability of reward programs on multiple occasions over the previous year and a half. He stated that the reward program was unable to overcome the fact that consideration was provided for the accommodations and was subject to tax. He stated that it was the county's opinion that the origin of the consideration is irrelevant to the taxability of the transaction.

Mr. Keith Staats, Grant Thornton LLP, submitted written comments, dated May 10, 2004, reiterating his position that reward points exchanged by a reward point member for an accommodation are not subject to tax. Mr. Staats discussed the differences between a transaction not subject to tax and a transaction exempt from tax. He stated that a transaction not subject to tax was subject to a different statutory construction and that the law must be construed strongly in favor of the taxpayer and against the government. Mr. Staats reiterated that the hotels and not the brand fund the reward point programs and that the monies belong at all times to the individual hotels. He again stated that no consideration was received by the hotels from the guest when the guest exchanges his points for a room.

NATURE OF COMMENTS RECEIVED

Nature of Hotel Reward Point Programs

Mr. Alex Laskowski, Grant Thornton LLP, discussed the nature of a hotel reward point program. He stated that the programs were created to develop customer loyalty and to give rewards to customers for free or for the customers' stays. Program members accumulate points, which they can exchange for free stays. Mr. Laskowski stated that the key factor is that the programs are funded by the hotel owners. The program is managed by the brand name, which is responsible for ensuring compliance by the hotel owners. Mr. Laskowski stated that the program fund is not a separate legal entity or an entity; rather, it just a pool of money. If the program is discontinued, any money remaining in the fund is returned to the hotel owners. The brand name has no right to the money.

Mr. Laskowski stated that reward points cannot be transferred or sold on the open market. Program members cannot exchange or sell their points. The points have no redeemable monetary value and can only be transferred within the same household.

Mr. Laskowski explained how the programs he represented were funded. When a guest checks into a hotel, he presents his reward card or gives the hotel his reward account number. The guest earns points for the stay, based on how much is spent for the accommodation. The guest may also earn points on other purchases at the facility, such as in an on-site restaurant. The amount of points earned is usually 2-6% of the room rate. The hotel owner contributes this percentage of the room rate into the program fund. All applicable taxes are paid on the full room rate by the guest. When the guest redeems his points, the hotel receives a reimbursement or credit but receives no payment. The reimbursement or credit is offset against the amount that was required to be contributed to the fund. Mr. Laskowski stated that the reimbursement or credit

may be recorded as revenue to the hotel, but that it was actually not a credit but an expense, but was accounted for as revenue. The reimbursement or credit is less than the full room rate and does not even cover the cost accrued by the hotel owner. The reimbursement or credit may be greater under some programs when the hotel is fully occupied.

Mr. Laskowski stated that it was a misconception that hotels in high tourist areas receive more money from the fund than those hotels contribute. He stated that hotels in those areas have more rooms and the high tourist areas have more brand hotels and restaurants where people earn points.

Mr. Laskowski stated his clients' belief that "it's a formula that's used to calculate how much at the end of the month or at the end of the accounting period . . . the hotel will pay into the fund." He stated that a hotel will only have 12 or 13 transactions per year, one for each month or accounting period. Mr. Laskowski stated that the program should be "a wash" overall.

Mr. Laskowski stated that the program manager charges a management fee to the hotels for overseeing the fund. Mr. Bill Van Antwerp, Marriott International, clarified that the fee is for the actual administration of the fund and the marketing costs associated with the program. His company's management agreement states that a brand hotel is required to be a member of the program. A percentage of the money contributed to the program by the hotel is paid to the program management to manage the fund.

Mr. Van Antwerp stated that, prior to 1993, his company treated all transactions relating to its reward point program as inter-company transfers and the transfers were exempt from tax. In 1993, his company was restructured and the reward point program was split from the real estate holdings.

Ms. Sue Sinquefield, Manatee Tax Collector, questioned where the money goes that is paid by reward point members for different levels of program membership. Mr. Kenneth Helms, Intercontinental Hotels Group, responded that all monies go into the fund and the reward point member is given a different amount of points for different membership levels. Ms. Sinqeufield questioned how the payment for membership levels equated with the statements that the monies all belonged to the hotels. Mr. Laskowski stated that you cannot purchase points under many of the programs and, under those programs that allow the purchasing of points, the money makes up a diminutive portion of the fund. Ms. Sinquefield also stated that the InterContinental program also allowed the transfer of points between members. Mr. Laskowski replied that the refund claims that had been filed were for earlier time periods during which the purchase or transfer of points probably was not allowed. He also stated that the programs were consistently changing because the programs were offered for the purpose of marketing.

Mr. Joe Tedder, Polk County Tax Collector's Office, asked who manages the funds. Mr. Laskowski replied that the funds were managed by a division or separate entity of the brand hotel. Mr. Van Antwerp stated that his company's fund was managed by a part of the company's marketing controller area. Mr. Tedder questioned whether each hotel had its own entity that manages its fund. Mr. Van Antwerp answered in the negative and stated that the fund was a pool of money that was managed by a group at the brand hotel's corporate headquarters. Mr. Tedder asked if the brand pays the commission, and Mr. Van Antwerp stated that it was not a commission but other costs. He stated that the fund manager receives whatever costs are incurred in the administration of the fund. Mr. Tedder asked who records the cost to the Internal Revenue Service. Mr. Van Antwerp stated that there were ongoing discussions with the Internal Revenue Service on that issue and that the brand will report the costs as income.

Mr. Marshall Stranburg, Department of Revenue addressed the use or exchange of points for things other than hotel stays and upgrades. He stated that the points could be used for various services offered at the hotel or for the purchase of merchandise. He stated that the points seemed to have value for the other things that could be purchased using the points. Mr. Van Antwerp stated that the value of the purchases was very small compared to the amount of points used for free rooms.

Mr. Stranburg asked the amount of other purchases and Mr. Van Antwerp stated that it was probably less than 2%. Mr. Stranburg asked whether the use of points for vacation packages were considered room redemptions. Mr. Van Antwerp replied that it was part of room redemptions. Mr. Laskowski clarified that Mr. Stranburg's question did not address the preview of timeshares but was addressed at the redemption of points for vacation packages. He stated that, "Vacation packages will be similar to . . . if they pay $200 for vacation package, you know whoever reports to them lets that room then they'll collect and pay the taxes of course."

Mr. Stranburg asked about restaurant charges being included in the charge that is made by the fund to the individual hotels. He asked if the restaurant charges were made of the amount put on a guest's bill or was it made of the gross receipts of the restaurant. Mr. Van Antwerp replied that it was the gross receipts. Mr. Laskowski then stated that it would be whatever was charged on the guest's folio. If a program provided that a guest earned points on restaurant charges, then the fee to the hotel would be based on the amount charged to the guest's bill for restaurant purchases.

Mr. Jeff Kielbasa, Department of Revenue, asked about reward point members earning points through partnerships with credit cards and other programs. He asked if money from those partnerships also goes into the funds. Mr. Van Antwerp answered in the affirmative. Mr.

Kielbasa then asked who owns that money. Mr. Van Antwerp clarified that the points earned through those partnerships belonged to the reward point member but had no value. The points could not be equated to the amount of money in the fund because not everyone redeems their points. Mr. Kielbasa restated the previous statement that the money in the fund belonged to the hotel. He asked who would own the money in the fund that came from the outside partnerships. Mr. Laskowski stated that it would go out to the hotels in that it would pay for the management fee. He stated that it would be allocated evenly. He reiterated that the funds were constantly changing and that the earning of points from outside companies was a new concept. He stated that money from those partnerships made up a small part of the funds, probably less than 5%.

Mr. Kielbasa asked about rulings that the industry had received from other states. He asked whether those rulings were published, from what states the rulings were received, and could the rulings be shared. Mr. Van Antwerp stated that there was a difference in some states between what the state said on the issue and what the audit group said. Mr. Laskowski stated that most of the rulings were not published. He stated that a few from Texas were listed in his handout. He also stated that directive number 99-2 from Massachusetts was published.

Ms. Linda Bridges, Department of Revenue, asked about the distribution of money back to the hotels if the programs were discontinued. She asked if the money would be distributed pursuant to a formula. Mr. Van Antwerp stated that he did not believe that would ever happen and had only brought up the subject to emphasize that the money belonged to the hotels. Mr. Laskowski stated that the money would be allocated based on each balance. If a hotel had a credit, then the hotel would receive money back. Ms. Bridges asked if a hotel that had a debit balance would be required to pay more into the fund. Mr. Laskowski responded that he could not

answer the question. Mr. Van Antwerp stated that he did not think so but that he could not answer.

Ms. Lila McHenry, Orange County Attorney, asked if a hotel would get the money back if the hotel changes ownership and is no longer in the franchise. Mr. Van Antwerp answered in the negative. Mr. Laskowski also answered in the negative and stated that it would be part of the intangible goodwill value of the hotel. Mr. Van Antwerp stated that the hotels were funding a marketing program and the hotels pay a fee for that program.

Ms. Erin Sullivan, Pinellas County Tax Collector, asked how a hotel books a room redemption. She asked if the hotel would book the full room value into its room revenue. Mr. Van Antwerp answered in the negative and stated that it would be put into room revenue and then taken out, so as to allow the hotel to reach its budgeted numbers for revenue. He stated that the hotel reports the revenue but then takes it out and puts it into another account so that it can be offset against the charge. Ms. Sullivan then asked if the hotel would notify the program that it had a certain number of room redemptions and would receive reimbursement. Mr. Van Antwerp answered in the affirmative and stated that it can be done in several different ways. He stated that the most common method was now electronic. The guest arrives at the hotel and the hotel has the certificate number for the guest. The hotel verifies the customer's name, provides the room, transmits information to the reward point program that the certificate number was used, and the program reimburses the hotel. Ms. Sullivan asked if the reimbursement was booked into the room account when it was received. Mr. Van Antwerp answered in the negative and stated that the reimbursement goes into the offset account where the credit is taken away from the revenue. Ms. Sullivan asked about how taxes were paid on the reimbursements. Mr. Van Antwerp stated that reward points are reimbursed at a rate set by the individual hotel. Ms. Sullivan asked if the

reimbursement went from the room account into the tax account. Mr. Van Antwerp answered in the affirmative and stated that it would be backed out of the room account because it was an exempt sale, provided that the reimbursements were determined to be non-taxable. He stated that the revenue was currently being reported in the room account as rewards redemption and that the tax was recorded and paid.

Mr. Frank Schneider, Osceola County, asked if the hotels were declaring taxes to the federal government on the pro-rata shares of the funds that are paid by the outside credit cards. Mr. Van Antwerp stated he could not answer the question.

Mr. Schneider stated that a guest could stay in his county using points earned from a credit card and would not have paid taxes on that stay whatsoever. Mr. Van Antwerp responded that those points would not have been taxed but that those points make up a very small part of the program.

Mr. Christopher Dawkins, Orange County Comptroller, asked for clarification on points earned on restaurant purchases. He stated that those purchases had been analogized to a program offering a free night as part of a five-night stay. He stated that the restaurant purchases appeared to constitute a significant part of the points earned. Mr. Laskowski stated that the only way to earn points on restaurant purchases was to charge the purchases to the room. He also stated that the hotel will pay money or receive a debit to the fund based on a room rate and the hotel's food and beverage. Mr. Laskowski stated that the point redemption for a free room was analogous to receiving a free room as part of a five-night stay. He stated that tax is paid on five nights only when the guest stays five nights and receives the sixth night free. Mr. Tom Drage, Orange County Attorney, asked how Florida gets the benefit of the tax paid if the nights paid for occurred outside Florida and the free room is used in Florida. Mr. Drage stated that the industry

was arguing that it was paying duplicate tax as a result of the reward point programs. Mr. Laskowski responded that complimentary rooms are exempt in most states. He also stated that the county received more money from the guest's other activities while staying in the free room. Mr. Drage stated that the fact that guests using free nights spend money in the county does not diminish the fact that the county was trying to get funding from the tourist development tax when someone stays in a room for which consideration was given. Mr. Keith Staats, Grant Thornton LLP, responded that the free night as part of a longer stay was used to show how free nights under a reward point program was similar to other types of situations. He stated that it was not intended to be a legally responsive answer.

Mr. Usher Brown, Orange County Comptroller, asked for clarification on how individuals can earn points. He stated that individuals could earn points for staying in a lodging, by purchase, through a credit card under some programs, and through restaurant purchases. Mr. Laskowski confirmed Mr. Brown's statement.

Ms. Barbara Kumbsky, Palm Beach County, stated that the industry's position was that the funding and administration of the programs were important aspects of making the programs exempt. She also stated that the industry had said that the funds could not be audited. She asked if the counties would be required to take the industries word on the funding and administration. Mr. Van Antwerp responded that the individual hotels would be the parties being audited. Ms. Kumbsky asked how she could know that what the industry said would not change in six months. Mr. Laskowski stated that the programs keep evolving but that the fund was not a separate taxpayer that would be audited.

Ms. Sinquefield asked if the reward point member makes a reservation through a separate system or through a central reservation system. Mr. Van Antwerp answered that the rewards

program uses the same people to do both things. Ms. Sinquefield then questioned the conclusion that there is no consideration when a reservation is made through a central reservation system. Mr. Laskowski responded that the central reservation system is not a lodging establishment. A discussion ensued comparing the different ways in which a person can obtain the use of a hotel room, such as through a travel agent or by walking into a hotel and asking for a room. Mr. Van Antwerp commented that an argument could be made that a travel agent was an agent of the hotel and so any transaction occurring through the travel agent was taxable. Mr. Laskowski stated that some could argue that the central reservation system was also an agent, but stated that he did not believe that was the case.

Mr. Larry Henricks, Orange County CVG, and Mr. Van Antwerp discussed whether the points used by a reward point member have value. Mr. Henricks stated the points have value and Mr. Van Antwerp disagreed.

Ms. Claudia Rilea, Orange County Comptroller, asked if a reward point member can redeem points at a hotel that does not participate in the program. Mr. Van Antwerp responded in the negative, with the exception of the use of points for timeshare units.

Ms. Ann Rose Farr, Martin County Tax Collector, asked if a reward point member earns points on his or her stay when points are used. Mr. Van Antwerp and Mr. Laskowski both answered in the negative.

Legal Basis for Exempt Nature of Reward Point Programs

Mr. Laskowski stated that the industry believed that room redemptions provided through reward point programs were not subject to sales tax under section 212.03(4), F.S. That statute states that no tax shall be imposed on rooms provided to guests when there is no consideration between the guests and the lodging establishment. Mr. Laskowski stated that the reward point

member was the guest based on the definition of the term. The definition of a public lodging establishment is any unit, group of units, dwelling, building, or group of buildings within the same complex which is rented to guests more than three times a year. He then discussed what happens when a member redeems points for a room. The reward point member redeems his points through the central reservation center via the phone or Internet. The central reservation center is not a public lodging establishment. The points are exchanged with the reservation center and not a hotel. He stated that the points are not exchanged with a public lodging establishment and do not have consideration from the guest. The guest then checks into the hotel, which does not receive points or any consideration from the guest. The guest provides his name and possibly a confirmation number or certificate. He stated that the central reservation system automatically reserves the room at the hotel.

Mr. Laskowski focused on the definition of "consideration." He stated that it was not found in the statutes but is defined in the Florida Administrative Code. He stated that the Code states that rental charges or room rates are subject to tax whether received in cash, credits, property, goods, merchandise, services, or other things of value. Mr. Laskowski stated that the hotel brand does not charge a rental for the use of a room. The guest using points does not pay a room rate and does not exchange any property, services, or other things of value with the hotel. The industry strongly believes that the points are not a form of consideration and are not included as other things of value. The points have no value on the open market and have no redeemable monetary value. He stated that the industry's belief had been affirmed in three Letters of Technical Advise issued by the Department of Revenue and publicly by the states of Massachusetts and Texas. He stated that the reimbursement from the fund is also not a contribution from the guest.

Mr. Laskowski then stated that, if the points are considered a form of consideration, then the points must be exchanged with the hotel and not the central reservation system. He stated that the points should be treated as a retailer's coupon if exchanged with the hotel because the hotel does not receive any money from a third party. The hotel receives its own money back. He stated that points can only be exchanged at a brand hotel and not at hotels outside the brand.

Mr. Stranburg asked for clarification on the retailer's coupon analogy. He stated that a hotel family can have several hotel brands within it and that an individual can earn points at one hotel brand but can later redeem the points at another within the hotel family. He asked why the manufacturer's coupon analogy would not be more appropriate. Mr. Laskowski stated that the analogy was more appropriate to a retailer's coupon because the hotel actually gives the points to the guest, who can then exchange them for a room.

Mr. Laskowski addressed the imposition of tourist development tax under Florida law. He stated that the counties should be bound by the rules promulgated by the Department of Revenue. He stated that Rule 12A-1.061(3)(f), F.A.C., explicitly states that hotels are not required to collect or pay tax on rentals that are provided without consideration.

Ms. Kumbsky questioned whether tax should be imposed when there was consideration between the hotel and a third party on behalf of the guest. She stated her opinion that it should not matter who pays the money on behalf of the guest. Mr. Van Antwerp responded that he hoped that the meeting would provide a resolution to the question.

Mr. Brown reviewed the facts of a reward point program transaction and gave his opinion as to the legal basis for taxing reward point transactions. He stated that each hotel is contractually obligated to contribute a percentage of revenue that they receive from participating guests into the reward point program. The program may or may not be a separate legal entity, but

he did not think that the program being a separate legal entity from the brand was relevant to the determination of tax. Points are earned by a reward point member on lodging, purchases at the hotel, or through a credit card. Tax may or may not be paid on the purchases that result in the earning of points, depending on where the purchases take place. The member decides where to use the points, which are of value to the member. Mr. Brown stated that barter transactions are subject to tax, even if the thing being bartered does not have value in the general marketplace. When the member chooses to use points at a hotel, the hotel receives a credit or an extinguishment of debt. Mr. Brown stated his opinion that this credit or extinguishment of debt was a taxable transaction.

Mr. Brown stated that tourist development tax applied to every person who rents, leases, or lets a room for consideration, unless an exemption applies. The tax is computed on the consideration which is paid for the right of occupancy. Exemptions are strictly construed against a taxpayer. Mr. Brown cited two court cases in support of this point. He then cited Rule 12A-1.061(3), F.A.C., for the definition of "consideration," which includes "credits" and "other things of value." Mr. Brown also referred to the definition of "consideration" in Black's Law Dictionary. Mr. Brown stated his opinion that reward points are things of value that are used to obtain things of value. Mr. Brown stated that the redemption of points in exchange for a room induces a contractual event. He then addressed the definition of "credit" and stated his opinion that the credit received by the hotel for the use of the room by the reward point member is a thing of value.

Mr. Brown then addressed the issue of whether the consideration was between the guest and the hotel. He stated that a clear rule would be contrary to previously issued Technical Assistance Advisements; that it would ignore the substance of the transactions; and that it would

create a way for hotels to avoid payment of the tax. He stated that the reward program administrators are acting as agents for the hotels. He cited two Technical Assistance Advisements that stated that dealers include agents.

Mr. Helms asked if Mr. Brown had seen any contracts to support his assumption that an agency relationship exists between the reward program funds and the hotels. Mr. Brown responded in the negative but stated that a business contract is not necessary to create an agency relationship. He stated that the actions of the central reservation system result in an agency relationship. Mr. Helms asked for clarification as to whom the system was acting as an agent, the hotel or the reward point member. Mr. Brown stated that a person can be a dual agent and that the hotel property receives a dual benefit. He again addressed the issue of extinguishment of debt by the hotels. He stated that numerous Internal Revenue Service cases state that an extinguishment of debt is a taxable event. He then discussed four court cases that addressed the issue of consideration.

Mr. Helms requested clarification of Mr. Brown's opinion regarding a guest giving consideration to the hotel by giving up the rights to the reward points. Mr. Helms stated that the guest does not give up any rights to the hotel, but would give up his rights to the program fund. Mr. Brown responded that the impelling inducement why the hotel is willing to let people stay in the rooms is because the people have the reward points. He stated that the hotel gets money in the advocacy of the consideration.

Pending Refund Requests

Mr. William Carlos Thomas, Pinellas County Tax Collector, addressed refund requests that were being processed by his office. He stated that his office was looking for applicable accounting records so as to verify gross, exempt, and tax-free sales. He also stated that his office

would like to see proof of accounting entries reducing group revenue account and restated financial records. Mr. Van Antwerp responded that the records were not an issue. He stated that most jurisdictions had difficulty with the adjustments to revenue, but that there were not usually too many adjustments.

Mr. Scott Groberski, Grant Thornton LLP, stated that his firm was working with Pinellas County and asked whether it was possible to only look at the refund claim without conducting a full audit. Ms. Sullivan answered in the negative and stated that her county would conduct a full audit. Mr. Laskowski stated his opinion that there were two issues. First, the parties would have to determine if the basis of the refund claim acceptable, and second, the tax authority would need to review the numbers. Mr. Kielbasa stated that an audit consists of more than looking at the accounting numbers. He stated that the Department of Revenue looks at the underlying franchise agreements, contracts, and business arrangements to determine taxable status and then issue a binding opinion. He contrasted that with the issuance of a Letter of Technical Advice, in which a taxpayer is free to characterize a transaction however he chooses. The letter is then based on that characterization. He stated that the result did not provide a clear picture of the deeper level of how the transaction works.

Mr. Drage asked whether the industry was basing its refund claims on the Letters of Technical Advice that had been issued. Mr. Laskowski answered in the affirmative.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON SEPTEMBER 19, 2006

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on August 4,

2006 (Vol. 32, No. 31, p. 3581). A rule development workshop was held on September 19, 2006, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida, commencing at 10:00 a.m., to allow members of the public to ask questions and make comments regarding the proposed changes to this rule chapter creating the following rule section:

12A-1.0615 Hotel Reward Points Programs

PARTIES ATTENDING

For the Department of Revenue	LARRY GREEN, Tax Law Specialist, Rules and Policy Administrative Process MARSHALL STRANBURG, Deputy General Counsel, Office of the General Counsel GARY GRAY, Revenue Program Administrator, Technical Assistance and Dispute Resolution ERIC PEATE, Senior Attorney, Technical Assistance and Dispute Resolution
For the Public	RITA DUNNE, Intercontinental Hotels Group JIM ERVIN, Holland & Knight ALEX LASKOWSKI, Grant Thornton DAVE LEIFER, Intercontinental Hotels Group CLAUDIA RILEA, Orange County Comptroller's Office FRANK SCHNEIDER, Osceola County SUE SINQUEFIELD, Manatee County ERIN SULLIVAN, Pinellas County Tax Collector's Office TERRY WELKER, Menna Development & Management, Inc. SAMER ZELOF, Marriott International
WRITTEN COMMENTS	LAURA L. FLOYD, Marriott International, Inc. TED HARMS, Hilton Sandestin Beach MARTHA O. HAYNIE, Comptroller, Orange County, Florida DIANE NELSON, Pinellas County Tax Collector GRANT THORNTON LLP

Proposed Subsection (2) of Proposed Rule 12A-1.0615, F.A.C., Whether Points Redeemed by Hotel Guests Have Intrinsic Taxable Value

Ms. Diane Nelson, Pinellas County Tax Collector, submitted written comments, dated October 16, 2006, stating that it is her position that reward points submitted to a hotel have a taxable value and there is no duplication or pyramiding of tax when imposing tax on both the redemption of points by a customer for a room and reimbursements received by a hotel from a program operator. Ms. Nelson states that sections 212.03 and 212.12, F.S., are currently in harmony and that "it is clear that the Legislature intended that the value paid, exchanged, or surrendered by the hotel guest. . ., whether it is cash or in kind value, be the amount subject to tax." Ms. Nelson states that tax is computed on the total consideration paid for the right of occupancy and makes no distinction between cash and in-kind payments. In addition, Rule 12A-1.061(1), F.A.C., states that tax is paid on the total rental charge with no deductions. Ms. Nelson states that she is in agreement that a room provided for no consideration is not a taxable transaction, but argues that the redemption by a guest of reward points constitutes consideration. Ms. Nelson states, "The hotel is not giving the guest a 'free room.' There is an exchange of value, points for a room. If the reward points had no value then there would be no reason to obtain the points. Basically, it boils down to the fact that the reward points have a monetary value and taxes should be collected from the guest on the value of the points or certificate."

Grant Thornton LLP submitted written comments, received on October 23, 2006, stating its position that reward points submitted by a hotel guest to a hotel do not have a taxable value. It quoted section 212.03(4), F.S., which states in part that "[N]o tax shall be imposed upon rooms provided guests when there is no consideration involved between the guest and the public lodging establishment." The written comments argue that, "The reimbursement from the rewards program to the hotel can be viewed as the hotels paying themselves back with funds they

previously contributed to the rewards program. Those funds (contributions) are paid based on a percentage of the room rate that was previously taxed by a hotel. Pursuant to Florida law prohibiting double taxation, Florida counties should not impose tax on the redemption of [r]eward [p]oints. This was the determination in the Senate and Finance Committee's Report that any reimbursements that do not exceed the amount the hotel contributes to the program should not be subject to tax. This determination is similar to the Department's rules on calculating the communication services tax for hotel owners. The tax paid on the hotel's sales tax return is not based on gross receipts. It is based on the hotel's profit from guest calls since tax has been previously paid to the provider on the cost of calls."

Grant Thornton LLP's written comments go on to state that points earned from a participating hotel and redeemed in Florida are not subject to sales tax under the Florida resale exemption. The transaction is described as follows:

> Under a Hotel Rewards Program, the guest receives Reward Points for a paid stay. The points are included in the price of the room. The amount of points earned is shown right on the folio the guest receives upon checkout. Some programs may include a statement that the member's account has been credited for the paid stay rather than the actual points earned. Hence, with each paid stay at a participating hotel, a guest earns a fraction of a complimentary room or upgrade. Points received from participating partners (i.e., financial institutions, airlines, rental car companies, etc.) and redeemed would not fall under the resale exemption. The points would be taxable upon redemption and treated as a gift certificate. Points earned at a participating hotel and redeemed at a hotel in the State of Florida would not be subject to tax pursuant to the Florida resale certificate.

Finally, Grant Thornton LLP points out that holding that reward points redeemed by a guest have no value would be in accord with the findings of several other states.

No change to Subsection (2)
The use of reward points by a customer in exchange for a room does not have a taxable value and no tax is due from a customer.

Proposed Subsection (3) of Proposed Rule 12A-1.0615, F.A.C., Accounting Period and Reporting of tax

Mr. Ted Harms, Hilton Sandestin Beach, submitted written comments, dated August 16, 2006, requesting that an annual basis be used to determine when tax is due on reward point redemptions. In the event that an annual accounting period was not possible, Mr. Harms requested that reward point program participants be allowed to deduct all contributions made to a reward point program from sales tax due and that all reward point program reimbursements be reported as taxable sales.

Ms. Laura L. Floyd, Marriott International, Inc., submitted written comments, dated October 18, 2006, agreeing that a comparison of reward point contributions and redemptions is a reasonable compromise, provided that an annual accounting period is used. Ms. Floyd stated her opinion that the tax due on reward point reimbursements should not be calculated on a monthly or other non-annual basis, as this would not reflect the nature of the reward point programs or the relationship between the programs and the participating hotels. Ms. Floyd requested that, to the extent that tax must be applied on a monthly basis, the taxable reimbursements be calculated for the prior fiscal or calendar year and applied to each month in the subsequent year. Ms. Floyd also stated that a reasonable method for an annual "true-up" could be determined and applied, if needed.

Ms. Martha O. Haynie, Comptroller, Orange County, Florida, submitted written comments, dated October 20, 2006, stating her opinion that each dealer be required to remit any tax due on reward point reimbursements on a monthly basis.

Grant Thornton LLP submitted written comments, received on October 23, 2006, proposing that the term "accounting period" be defined as the 12-month period ending with the last month of the hotel's accounting year, so as to reduce the frequency and complexity of the

taxable reimbursement calculation. If the Department determines that a 12-month period ending December 31 is preferable, it has no objections. It also stated that the use of the taxable percentage calculated from the prior calendar year's contribution and reimbursement amounts would be applied to the monthly reimbursement amounts to arrive at a taxable base. The letter stated that this approach would work best for hotels, hotel companies, state and counties.

Change to Subsection (3)
Subsection (3) is revised to define "accounting period" as a calendar year.

Proposed Subsection (3) of Proposed Rule 12A-1.0615, F.A.C., Calculation of Tax

Ms. Martha O. Haynie submitted written comments detailing the formula she proposed using to calculate the taxable reimbursements. Ms. Haynie requested that language be added to the rule stating that the percentage used to determine taxable redemptions must be recalculated annually in January. The formula was set out as follows:

* * *

> The estimation percentage is calculated as follows:
> Percentage of Prior Year Actual Taxable Redemptions *equals* (Total Actual Prior Year Redemptions *minus* Total Actual Prior Year Contributions) *divided by* Total Actual Prior Year Redemptions
>
> or
>
> $P = \frac{(r - c)}{r}$
> Where: P = percentage of prior year actual taxable redemptions
> r = total actual prior year redemptions
> c = total actual prior year contributions
>
> To estimate taxable redemptions reported in the current month, P as calculated above, is multiplied by actual monthly redemptions in the current year as follows:
> Estimated Taxable Redemptions for $Month_x$ of the Current Year *equals* Percentage of Prior Year Actual Taxable Redemptions *times* Actual Redemptions in $Month_x$ of the current year
>
> or

$M_x = P * R_x$

Where: M_x = estimated taxable redemptions for month $_x$ of the current year
P = percentage of prior year actual taxable redemptions
R_x = actual redemptions in month $_x$ of the current year
$_x$ = 1 through 12, representing the months January through December of the current year, respectively.

If P is less than or equal to 0%, then no tax is due and no refund of tax is owed in any month of the current year.

The current month estimate of taxable redemptions, M_x, is the amount reported on the current TDT return and TDT is to be remitted on this amount.

* * *

Definitions of Terms
r = total prior year redemptions
c = total prior year contributions
x = 1 through 12, representing the months January through December of the current year, respectively
P = percentage of prior year actual taxable redemptions
R_x = actual redemptions in month x of the current year
M_x = monthly estimated taxable redemptions for month x of the current year
Formulas
P = Percentage of Prior Year Actual Taxable Redemptions = $\frac{r - c}{r}$
M_x = Monthly Estimated Taxable Redemptions for Month x of the Current Year
= P times R_x

Change to Subsection (3)
Subsection (3) was revised to provide that taxable reimbursements are to be calculated using the prior year's total reimbursements and contributions. The contributions are subtracted from the reimbursements and the resulting figure is divided by the total reimbursements. The resulting percentage is applied to the total reimbursements in the current reporting period to determine the taxable base. The percentage is required to be recalculated each January.

Proposed Additions to Proposed Rule 12A-1.0615, F.A.C., Sharing of Reward Point Transactions, Audit Requirements, Books and Records

Ms. Martha O. Haynie submitted written comments stating, "None of the participating dealers in a reward point program may share reward point transaction gains, losses, accounting entries of any type or otherwise combine return data with each other. Each dealer shall be required to report, account for and remit [tourist development tax] due from any revenue,

including reward points consideration, in accordance with this Rule, as a separate dealer and reporting entity." Ms. Haynie further stated, "Each dealer shall be required to maintain complete, adequate, and sufficient books and records in accordance with Florida Statutes, county ordinances and [the] Florida Administrative Code including, but not limited to, room folios and those records generally kept in the ordinary course of business that support their regular [tourist development tax] returns and show all reward points redeemed for, and in consideration of, the right to stay. Each dealer shall also be required to keep complete, adequate, and sufficient books and records in accordance with Florida Statutes, county ordinances and [the] Florida Administrative Code including, but not limited to, those records showing any and all reward point reimbursements, contributions, credits, payments, debt forgiveness, consideration of any type whatsoever, and liabilities related to reward point transactions between the dealer and both the central reward point fund and the entity responsible for administering the reward point program for the right to lodging pursuant to the dealer's reward points program. Audit of reward point transactions shall be handled in the same manner as transient rental transactions subject to taxation under Section 212.03, F[.]S[.,] and Section 125.0104, F[.]S."

Additions to Paragraphs (3)(a) and (e)
"Hotel" is defined to mean a single operation at a specific location and tax due must be calculated on by each hotel. Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.

Addition of New Subsection (4)
A hotel must maintain records received from or sent to the central program fund indicating the reimbursements and the contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage of the required records will be sufficient compliance with these provisions.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.0615, F.A.C.:

Proposed Subsection (2) of Proposed Rule 12A-1.0615, F.A.C., Whether Points Redeemed by Hotel Guest Have Intrinsic Taxable Value

Ms. Erin Sullivan, Pinellas County, questioned whether the points have value. She stated that her county believed the points did have value and that tax should be collected when a program member exchanged points for an accommodation. She asked if that issue had already been decided. Mr. Marshall Stranburg, Department of Revenue, stated that it had not been decided but that the rule draft indicated that the Department was not headed in that direction. He requested her to submit her concerns in written form.

Mr. Jim Ervin, Holland & Knight, stated that most, if not all, of the industry agreed with the portion of the rule that concludes that there is no taxable transaction between the hotel and a reward point member. He stated that everyone did not necessarily agree with the taxability of redemptions less contributions, but that most companies believed it was a reasonable compromise.

Mr. Alex Laskowski, Grant Thornton LLP, stated that the issue arose in many jurisdictions and that most had chosen a redemption-to-contribution comparison method. He stated his agreement with the non-taxability of the transaction between the hotel and the reward point member.

Mr. Ervin commented that the Department had taken the position in informal rulings that the transactions between hotels and reward point members were not taxable. He stated that this element of the rule was not new and the rule did not represent any change in the law. He stated his opinion that applying the rule retroactively would not be inconsistent with the law or inconsistent with prior positions taken by the Department. Mr. Stranburg responded that the comment was noted.

No change to Subsection (2)
The use of reward points by a customer in exchange for a room does not have a taxable value and no tax is due from a customer.

Proposed Subsection (3) of Proposed Rule 12A-1.0615, F.A.C., Accounting Period; Calculation and Reporting of Tax

Ms. Claudia Rilea, Orange County, asked for confirmation that whatever transactions occurred during a calendar month will be reported in the following calendar month. Mr. Eric Peate, Department of Revenue, responded that the rule uses the term "accounting period." He then stated that the rule was meant to be practical and reasonable, and that the Department was seeking input from the audience on the meaning of "accounting period." Ms. Rilea responded that reporting transactions from a particular month in the following month was the method used for reporting "regular" transient taxes and asked if the same basis would be used for the reporting of taxable reward point reimbursements. Mr. Stranburg reiterated that the Department was seeking feedback as to the best method for the reporting of taxable reward point reimbursements. Ms. Rilea stated that the normal method, i.e., reporting a transaction in the month following the month in which the transaction occurred, would be the preferred method. Mr. Stranburg reiterated Ms. Rilea's statement for clarity that whatever method of accounting a reward point property uses to report its "regular" transactions should be the method used to report its reward point transactions. Ms. Rilea agreed that whatever transactions occurred in a particular month should be reported in the following month.

Mr. Stranburg reiterated the desire for input on the term "accounting period" and particularly asked whether that period should be monthly or something other than monthly. Mr. Stranburg asked Ms. Rilea if that potentially changed her comment. Ms. Rilea responded that her office's computers cannot process quarterly transactions and that a monthly basis is the most convenient and easiest thing.

Mr. Ervin discussed the idea that taxing the excess of reimbursements over contributions addresses the assumption that tax was not paid on the dollars that generated those points. He stated his understanding of the industry's concern regarding the cyclical and fluctuating nature of the business relating to when people earn reward points and when people spend those points. He then stated that looking at each month separately does not provide an accurate reflection of the contribution and redemption balance, and further stated that an annual or longer basis would be more accurate. He clarified that this would be used to determine what the monthly payment would be and would not be inconsistent with a monthly reporting requirement. Mr. Laskowski also stressed the inaccuracy of looking at contributions and redemptions on a month by month basis. Mr. Terry Welker, Menna Development & Management Inc., then added his agreement that calculating the amount on a month by month basis would be difficult for the industry. In addition, Mr. Welker stated that his hotel is paid back from its franchise and is also paid back tax.

Ms. Rilea asked Mr. Welker for clarification on whether the fund reimburses his hotel for a room rate amount plus the tax due on that room. Mr. Welker confirmed that statement but further stated that it could be different with different franchises.

Ms. Rilea then asked Mr. Ervin for a further explanation on using an extended basis to calculate the taxable amount. Mr. Ervin stated that the prior year would be looked at and the difference between that year's reimbursements and contributions would be used in the current year. Ms. Rilea asked if the estimate would be updated each year. Mr. Ervin stated that the estimate could be recalculated each year or a true-up could be done at the end of the year based on actual amounts. Mr. Ervin stated that a true-up would not be unreasonable but might be a complicating factor.

Mr. Laskowski stated that some of the reward point programs would like to have some way of calculation that would allow them to remit the applicable taxes to the hotel and that a month by month calculation would make it too complex. He further stated that the industry would prefer using the prior year's totals because that would allow the program to add tax as necessary. He stated that this would allow the reward point programs to program its computers properly once a year and would also result in fewer auditing issues. Mr. Laskowski and Ms. Rilea then proceeded to discuss the general nature of the reward points program, specifically how a view of a program statewide would result in a zero net sum amount, as compared to a hotel by hotel view, which will result in some hotels having more contributions and other hotels having more reimbursements.

Mr. Stranburg asked Ms. Rilea if she had any comments or input as to whether a true-up should be done at the end of each year, whether the taxable amount should be recalculated each year, or some combination thereof. Ms. Rilea responded that that was a point of negotiation and that her comptroller would not be opposed to either position. She stated her belief that an estimate updated yearly with no true-up would be acceptable. Mr. Stranburg asked if any other local representatives could comment on this issue.

Mr. Frank Snyder, Osceola County, stated that an annual or biannual basis would probably be more convenient for tax filers. However, requiring individual properties to have multiple filing requirements would place a burden on local jurisdictions; therefore, monthly filing was preferred. He then asked if there were any other transactional excise tax under the statutes that allowed bundling at the end of the month and netting it to determine how much tax to remit. Mr. Stranburg replied that, to the extent that you have credits and overpayments that occur in the same period as taxable transactions, you are allowed to net them against one another.

Mr. Dave Leifer, Intercontinental Hotels Group, stated that requiring reporting on more than a monthly basis would also add accounting burdens for the hotels. He stated his desire to have something that would cause the least burden to both hotels and local taxing jurisdictions.

Mr. Laskowski responded that the idea was not to require the filing of additional returns but to report the taxable amount on a regular return or the final return of the year. Mr. Stranburg asked for clarification as to whether Mr. Laskowski meant an annual accounting and an annual reporting or an annual accounting and monthly reporting based on that accounting. Mr. Laskowski stated that the preference was for an annual accounting with a monthly reporting based on that accounting, but that he was not opposed to an end-of-year true-up. Mr. Welker stated his agreement with Mr. Laskowski's proposal.

Ms. Rilea stated that her comptroller's position was that tax would be due if redemptions exceeded contributions and that no refund would be given if contributions exceeded redemptions. Mr. Laskowski requested clarification on whether Ms. Rilea's comptroller was against an annual calculation. Ms. Rilea stated her agreement with an annual calculation. She further stated that her county's position did not reflect the position of other southern counties.

Ms. Sue Sinquefield, Manatee County, asked whether a specific accounting period would be required. Mr. Stranburg asked whether it would be easier to have a calendar year basis or a fiscal year basis. Ms. Sinquefield stated her preference for a calendar year basis. Mr. Stranburg then asked for other comments from the industry. Ms. Rilea agreed with the calendar year basis. Mr. Samer Zelof, Marriott International, stated that his employer did not currently use a calendar year basis for accounting and that it would be difficult to get the necessary data for that period. He stated that it would be easier to use a fiscal year basis. Mr. Zelof stated that Marriot used a 13-period accounting cycle. Mr. Laskowski stated that Marriot's accounting cycle would end

close to December 31, and further stated his opinion that it should be agreeable to all parties if the cycle were off "a couple of days." Ms. Rilea stated that Marriot was the only dealer on a 13-month accounting cycle, and further stated that she would not have a problem if the accounting cycle was off a little as long as the dealer ended up with essentially a year.

Mr. Ervin questioned whether it mattered if the accounting cycle were done on a calendar year or a fiscal year, so long as the reporting was done monthly. Ms. Rilea responded that it would be confusing to dealers and would create errors if the accounting cycle were not specifically defined somewhere. Mr. Ervin stated his opinion that the rule would state that the percentage shall be determined using a taxpayer's prior fiscal year according to its books and records. Ms. Rilea agreed.

Mr. Laskowski stated his opinion that a calendar year would be the most practical approach, given that a reward point program may be on a different fiscal year from a participating hotel. Mr. Ervin deferred.

Additions to Paragraphs (3)(a) and (e)
"Hotel" is defined to mean a single operation at a specific location and tax due must be calculated on by each hotel. Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.

Addition of New Subsection (4)
A hotel must maintain records received from or sent to the central program fund indicating the reimbursements and the contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage of the required records will be sufficient compliance with these provisions.

Additions to Proposed Rule 12A-1.0615, F.A.C., Sharing of Reward Point Transactions; Audit Requirements, Books and Records

Ms. Rilea addressed the issue of documentation necessary in an audit. Mr. Peate requested Ms. Rilea to state her recommendations as to the documentation required. Ms. Rilea

stated that she had never looked at data from the reward point program level and so could not make an informed recommendation. She stated that it needed to be documentation that would allow a thorough audit. Mr. Stranburg commented that the rule was addressing tax treatment and Ms. Rilea's concerns addressed audit procedure. Mr. Stranburg stated that it was difficult to put audit procedures into a rule because there was a good chance of the procedures not working in all cases. Ms. Rilea responded that the parties needed to put their heads together and work something out. Mr. Stranburg then questioned whether the details to which Ms. Rilea alluded should be addressed in some form of voluntary agreement with the individual properties.

Mr. Laskowski stated that the reward point programs do not believe that they need to provide any additional information. They believe that the necessary information is already at the hotels. He stated that each hotel has an invoice showing the amount of contributions and redemptions on a cash basis. Mr. Welker agreed.

Ms. Rilea stated that her county generally asked for supporting documentation and were only given spreadsheets. She stated that the county never received contracts between the hotels and the programs or invoices. She stated her opinion as to the necessity of language in the rule requiring documentation so as to protect the local taxing authorities. Mr. Ervin responded that a lack of documentation should result in a denial of a refund. He stated his belief that the records should be available at the hotels. He further stated his concern with the idea of a compliance agreement being required of each property. He stated that he had anticipated a rule that would be generally applicable to the industry. Mr. Stranburg responded that he was merely bringing up a point for discussion.

Mr. Ervin replied that the concept of an agreement made sense, but that he hoped that the rule would not necessitate individual agreements with every hotel. He then asked if the

Department foresaw amending the rule to include that concept. Mr. Stranburg stated that he was aware that not all of the parties were in agreement and that he did not know at that point what the Department might do. He stated that the Department would evaluate the information received at the workshop and any written comments and then work on a rule draft. He did not know if there would be another workshop. Mr. Ervin asked how the Department would bring the concept to the attention of parties that may object. Mr. Stranburg stated that the present parties would probably talk to others and spread the information, and that the Department would allow interested parties to submit written comments. Mr. Ervin stated his concern that any agreement reached by the parties present at the workshop may not be agreeable to others.

Ms. Rilea and Mr. Laskowski discussed the administration of the reward point programs. Ms. Rilea sought information as to whether the programs kept track of where points were earned. Mr. Laskowski stated that he believed the programs could track such information but that it would be very expensive. He stated that the programs would prefer not to track such information. Mr. Laskowski and Mr. Stranburg then discussed how points are earned by program members.

Mr. Gary Gray, Department of Revenue, asked Mr. Laskowski various questions concerning the operation of the reward point programs. Mr. Gray asked if the points expire and Mr. Laskowski answered in the negative. Mr. Gray asked how many points never get redeemed and Mr. Laskowski responded that he did not know. Mr. Welker stated his belief that the points did expire, but Mr. Laskowski disagreed. Mr. Gray asked if anyone else knew and Ms. Rita Dunne, Intercontinental Hotels Group, stated that points did not expire under her program. Mr. Peate asked for clarification from Mr. Welker. Mr. Welker reiterated his understanding that the points would expire if not used, but stated that he could be wrong.

Ms. Sinquefield asked Ms. Dunne what percentage of points was given away to vendors or employees of the program. Ms. Dunne stated that she was not familiar with that part of the program.

Ms. Rilea stated her preference for having a separate line item on the tax return for reward points transactions. She stated that the return should indicate where the tax came from, where the figures come from, what were the current month redemptions, calculation of a percentage and then tax due. Mr. Stranburg responded that he did not know if that would be possible on the state sales tax return and asked Ms. Rilea if she would be comfortable with a backup schedule or other supporting information. Ms. Rilea responded in the affirmative so long as there was no prohibition to the local taxing jurisdictions requiring more on the local returns.

Mr. Welker stated that his company received no revenue from the redemption points and was being penalized on money that it had not received. He stated his hope that the issue was resolved soon.

Ms. Sinquefield stated that the Senate report also addressed the dot com issue. She asked if there were any plans to go forward with a rule on that issue. Mr. Stranburg stated that he did not know of any current plans. Ms. Sinquefield asked why and Mr. Stranburg responded that the dot com issue was working its way through another process. Ms. Sinquefield asked if there was litigation on that issue. Mr. Stranburg stated that what the Department was doing was not in litigation and that he could not get into much detail without getting close to confidentiality issues. He stated that other avenues were being utilized to address the issue. Ms. Sinquefield asked if the counties could get more information in a less open forum. Mr. Gray and Mr. Stranburg both stated that the counties had received the information. Ms. Sinquefield asked if the counties would continue to be updated and Mr. Stranburg replied in the affirmative.

Additions to Paragraphs (3)(a) and (e)
"Hotel" is defined to mean a single operation at a specific location and tax due must be calculated on by each hotel. Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.

Addition of New Subsection (4)
A hotel must maintain records received from or sent to the central program fund indicating the reimbursements and the contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage of the required records will be sufficient compliance with these provisions.

Retrospective Application of the Proposed Rule

Mr. Welker stated that his company had been audited and assessed by his local taxing authority. He questioned whether the resulting rule will be binding on local taxing jurisdictions.

Mr. Peate stated that the rule was a work in progress and that he anticipated more rule workshops. He stated that he could not advise Mr. Welker how to proceed with his audit.

Mr. Ervin reiterated Mr. Welker's question on whether the resulting rule will be binding on local tourist development tax authorities. Mr. Ervin also questioned whether the resulting rule will operate prospectively or retrospectively.

Mr. Peate stated that rules the Department of Revenue's rules are binding on local tourist development tax authorities. Mr. Peate further stated his understanding that the rule would be prospective. Mr. Stranburg reiterated that the rule would be prospective, absent specific authorization permitting the application of rule provisions retrospectively.

Ms. Rilea again addressed the issue of whether the rule would be prospective or retrospective. She stated that her county had a number of pending refund requests and that some dealers were continuing to pay tax on the transactions. She also stated that at least one taxpayer had stopped paying the tax several years ago. Mr. Stranburg responded that the rule would have a prospective application but that the Department was trying to work with both hotels and reward

point programs to reach a fair and equitable resolution. He stated that it would be safest for properties to continue to remit the tax and file refund claims.

Ms. Sinquefield asked for clarification that the rule would be prospective in nature. Mr. Stranburg responded that rules are required to be prospective unless specific guidance was provided allowing an agency to make a rule retrospective. He stated that the Department of Revenue had been given no specific guidance and that the rule must be prospective. He stated that a Senate report addressing the issue had been available for several years. Ms. Sullivan asked if the parties should consider the date of the Senate report. Mr. Stranburg responded that it was a consideration that should be kept in mind.

Ms. Sinquefield asked if the Department had issued any refunds for reward point program transactions. Mr. Stranburg stated that it was not the appropriate place to discuss specific taxpayer claims. Ms. Rilea clarified that the question did not concern a specific taxpayer. She asked if the Department had issued refunds to any taxpayers. Mr. Stranburg responded that he was not aware of any action on any refund claim. He believed that there were some under audit but he did not know where those cases were in the audit process. He did not know if they were active or suspended.

Statutes Addressing Reward Point Programs

Mr. Ervin asked for clarification that the proposed rule represented an interpretation of a previously existing statute and that there had been no recent change in the statutes that prompted the proposed rule. Mr. Peate agreed that the proposed rule represented an interpretation of a previously existing statute and that there had been no recent change in the statutes that prompted the proposed rule.

Ms. Sinquefield asked for clarification of which statute addressed reward point programs. Mr. Peate responded that the applicable statutes are Sections 212.03 and 212.12(12), F.S. He further stated that the Department of Revenue was trying to harmonize the transient rental tax statute with the legislative intent against pyramiding.

SUMMARY OF PROPOSED CHANGES TO PROPOSED RULE 12A-1.0615, F.A.C.

- "Hotel" is defined to mean a single operation at a specific location and tax due must be calculated on by each hotel.
- The accounting period is defined as a calendar year. Taxable reimbursements are to be calculated using the prior year's total reimbursements and contributions. The contributions are to be subtracted from the reimbursements and the resulting figure divided by the total reimbursements. The resulting percentage is then applied to the total reimbursements in the current reporting period to determine the taxable base. The percentage must be recalculated each January.
- Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.
- A hotel must maintain records received from or sent to the central program fund indicating the reimbursements and the contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage of the required records will be sufficient compliance with these provisions.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 13, 2009

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on September 25, 2009 (Vol. 35, No. 38, p. 4638). A rule development workshop was held on October 13, 2009, in Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed changes to this rule chapter creating the following rule section:

12A-1.0615 Hotel Reward Points Programs

PARTIES ATTENDING

For the Department of Revenue	LARRY GREEN, Tax Law Specialist, Rules and Policy Administrative Process TAMMY MILLER, Senior Attorney, Technical Assistance and Dispute Resolution MARK ZYCH, Director, Technical Assistance and Dispute Resolution
For the Public	ALFREDO CRUZ, Representative Rehwinkel-Vasilinda CHRISTOPHER DAWKINS, Orange County Comptroller's Office ARTIS DUKES, Polk County Tax Collector JIM ERVIN, Holland & Knight STEVEN FARBER, Pinellas County Tax Collector BOB GOLDMAN, Madsen Goldman & Holcomb, LLP SCOTT GROBERSKI, Grant Thornton CHARLES JOHNSON, Marriott International ALEX LASKOWSKI, Grant Thornton EILEEN RAINEY, Hyatt SARAH RICHARDSON, Pinellas County Attorney's Office CLAUDIA RILEA, Orange County Comptroller's Office JIM SNYDER, Florida Association of Convention and Visitors Bureaus JOYCE SUNDAY, Walton County Clerk's Office EMILY THOMAS, Liberty Partners of Florida, LLC

PATSY WILLBANKS, Okaloosa Clerk of the Circuit Court

WRITTEN COMMENTS MARTHA O. HAYNIE, Comptroller, Orange County, Florida
JIM ERVIN, Holland & Knight

Proposed Subsections (3) and (4) of Proposed Rule 12A-1.0615, F.A.C., Transactions Between a Hotel and a Reward Points Program, and Recordkeeping

Ms. Martha Haynie, Orange County Comptroller, submitted written comments, dated October 9, 2009, and October 27, 2009, stating her proposed changes to subsections (3) and (4) of the proposed rule. Ms. Haynie recommended that subparagraph (3)(a)1. be amended to add language to the term "hotel," so that the definition equates to the definition of "transient accommodations." Ms. Haynie recommended that the definition of "contribution" in subparagraph (3)(a)3. be amended to add language clarifying that the only contributions that may be used in the annual calculation be those arising from transient rental revenue; this recommendation was removed from her second submission. Ms. Haynie recommended striking paragraph (3)(b), relating to an estimated calculation for a hotel's first year of program participation, in its entirety. All references in other subparagraphs to the first year estimate and potential refunds arising from the estimate were also recommended to be removed. Ms. Haynie proposed that, instead of using an estimated calculation for the first year, a hotel should be required to calculate the amount due for the initial twelve months of participation at the end of that period and must remit any taxes due with the return due in the month following the end of that period. A taxpayer would also be required to file a supplemental schedule with that return that allocated what amounts were being remitted for what periods. The percentage calculated for the initial twelve months would be used to calculate the percentage applicable to any remaining months in the calendar year. The hotel would calculate the annual percentage to be used in the

second full calendar year of participation in January following the first full calendar year of participation. An example was provided. Ms. Haynie recommended amending subparagraph (3)(c)2. to change "reporting period" to "calendar month." Finally, Ms. Haynie recommended amending subsection (4) to add language clarifying that all reward point transactions must be supported by auditable records.

Mr. Jim Ervin, Holland & Knight, submitted written comments, dated October 30, 2009, stating the response to Ms. Haynie's recommendations on behalf of Marriott International, Hyatt Corporation, InterContinental Hotel Group, and Grant Thornton. Mr. Ervin stated that the withdrawal of the recommendation to amend the term "contribution" in subparagraph (3)(a) and the recommended amendments relating to a hotel's first year of participation in a program were acceptable. Mr. Ervin stated that the recommendation to change "reporting period" to "calendar month" was problematic, as some companies report taxes for periods other than calendar months. He recommended no change be made to the term "reporting period."

Change to Proposed Rule 12A-1.0615(3)(a)1., F.A.C., Definition of "Hotel"
The term "hotel" will be amended to include the requirement that it provide transient accommodations as described in Section 212.03, F.S.

Change to Proposed Rule 12A-1.0615(3)(d), F.A.C., Hotel's Initial Year of Participation
Rule 12A-1.0615(3)(d), F.A.C., addressing the calculation of an estimate for a hotel's initial year of participation in a reward points program, will be struck in its entirety, as will all references to estimates and anticipated amounts in a hotel's initial year of participation. A hotel will be required to determine the percentage to be used in its first twelve months of participation in a reward points program using the actual amount of contributions and reimbursements received in that period. This calculation will be done at the end of the first twelve months, and the full amount of any tax must be remitted on the first tax return due following the end of the first twelve months. The calculation used for the first twelve months will also be used for any remaining months in the calendar year in which the calculation is made.

No change to Proposed Rule 12A-1.0615(3)(c)2., F.A.C., Reporting Period
The term "reporting period" will not be changed so that the rule adequately reflects the different accounting periods used by members of the industry.

No change to Proposed Rule 12A-1.0615(4), F.A.C., Recordkeeping
Detailed recordkeeping requirements are provided in Sections 212.13 and 213.35, F.S., and Rule Chapter 12-24, F.A.C. The recordkeeping section of the proposed rule will not be changed.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.0615, F.A.C.:

Proposed Subsection (1) of Proposed Rule 12A-1.0615, F.A.C., Definition of "Central Fund Administrators"

Ms. Sarah Richardson, Pinellas County Attorney's Office, asked whether the rule contained a definition of "central fund administrators." Ms. Tammy Miller, Department of Revenue, answered in the negative. Mr. Alex Laskowski, Grant Thornton, and Mr. Charles Johnson, Marriott International, discussed the possible ways to define the term based on industry practice. Ms. Claudia Rilea, Orange County Comptroller's Office, suggested replacing the term with "reward program administrator." Ms. Richardson and Mr. Laskowski concurred.

Change to proposed Rule 12A-1.0615(1), F.A.C.
The term "central fund administrators" will be replaced with "reward program administrators." The term "central reward points program fund" in sub-subparagraphs (3)(a)2. and 3., and the term "central program fund" in paragraph (4)(a) will be replaced with "reward program."

Proposed Subsection (2) of Proposed Rule 12A-1.0615, F.A.C., Whether Reward Points Have Intrinsic Value and the Use of the Points Should Be Taxed

Ms. Joyce Sunday, Walton County Clerk's Office, stated her opinion that hotel reward program points have intrinsic value and that a guest should be subject to tax when he exchanges points for the use of a hotel room. Ms. Patsy Willbanks, Okaloosa Clerk of the Circuit Court, Mr. Artis Dukes, Polk County Tax Collector, and Ms. Richardson agreed. This issue was raised and discussed at length in prior workshops, and the counties stating that the guest should be subject to tax on his or her use of points previously expressed the reasons for that opinion. Those reasons were again stated and discussed at this workshop.

Mr. Johnson, Ms. Willbanks, and Ms. Miller discussed whether there was an issue of double taxation when a hotel guest uses points on which tax may or may not have been

previously paid. Mr. Ervin commented that there was an element of the hotel paying money to itself that needed to be examined in relation to the possible issue of double taxation.

Mr. Laskowski and Ms. Willbanks discussed how hotel guests are allowed to use their points among different chains within one reward program. Ms. Willbanks and Ms. Rilea then discussed whether guests are allowed to trade points for other items, including gift cards that could be used at hotels outside the reward program. Mr. Johnson stated that, in the case of a guest using a gift card for a hotel room, that the use of the gift card would be taxed. Ms. Sunday and Mr. Laskowski then discussed the tax treatment of gift cards or vouchers acquired through raffles. Mr. Dukes stated that he did not see the difference between a guest using a gift card for a hotel room and a guest using points for the same room.

Mr. Laskowski stated that the discussion was addressing an area that he thought had been agreed to, despite the different opinions as to whether the use of points by a guest was taxable. He stated that he was in agreement with this section of the proposed Rule as written. Mr. Johnson, Mr. Ervin, and Ms. Rilea agreed.

No change to Proposed Rule 12A-1.0615(2), F.A.C.
The Florida Senate issued Report Number 2005-131, Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Reward Points Program, in November 2004. This report provides that "all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed." (pg. 29)

Subsection (2) of the proposed rule will continue to provide that when a member of a hotel reward points program uses a certificate or confirmation number to use transient accommodations at no charge, no transient rental tax is to be collected from the member.

Proposed Paragraph (3)(c) of Proposed Rule 12A-1.0615, F.A.C., Comparison of Contributions to Reimbursements

Ms. Rilea stated that some participating hotels had revenue from activities other than the rental of hotel rooms. For instance, the hotel might own an on-site restaurant or gift shop. Ms.

Rilea stated that these hotels could make contributions into the fund based on non-hotel room revenues. Ms. Rilea proposed that the amount of contributions used in the annual calculation should only include those amounts paid into the fund related to hotel rooms. Mr. Ervin gave his opinion that this calculation could work at a county level but would not be appropriate at the state level, as the hotel would have collected and remitted state sales tax on all revenue, not just on hotel room revenue.

No change to Proposed Rule 12A-1.0615(3)(c), F.A.C., Comparison of Contributions to Reimbursements

The recommendation of Ms. Rilea that the term "contributions" be limited to transient accommodation activities only was removed in the written submissions provided by the Orange County Comptroller following the workshop. The definition of "contributions" will not be changed.

Proposed Paragraph (3)(d) of Proposed Rule 12A-1.0615, F.A.C., Hotel's First Year of Participation in a Reward Program

Ms. Sunday asked whether information as to the contributions and reimbursements was available on a monthly basis. Ms. Miller stated that it was the Department's understanding that such information was available; however, the Rule proposed determining the taxability of the excess reimbursements on an annual basis to account for fluctuations throughout the year due to tourism.

Ms. Sunday disagreed with using a formula on a monthly basis because it would only provide an estimate of gross taxable revenue. She stated that this presented a number of problems for local taxing jurisdictions. Mr. Chris Dawkins, Orange County Comptroller's Office, stated that his county had a suggestion that would allow no calculation for the first year. Instead, the calculation to be used in year two would also be used for year one. Ms. Miller stated that the Department had considered that suggestion but chose to include the estimate calculation for a hotel's first year of participation in a reward program. The Department felt that use of this

calculation would provide counties with money up-front, instead of having to wait until the end of the year.

Mr. Johnson stated his opinion that the industry would be willing to accept a first-year estimate calculation, but he questioned the methods necessary for compliance. Mr. Johnson later stated his preference for eliminating the first-year estimation and instead using actual numbers at the end of the calendar year. Mr. Laskowski agreed.

Ms. Rilea stated that her county's suggestion was to eliminate the estimation and to have a hotel file a supplemental schedule based on actual numbers, when those numbers were available. Mr. Laskowski questioned how the first-year numbers would apply to the following year, if a hotel opened in a month other than January. Ms. Rilea stated that she had not considered the issue but would be willing to work with the industry.

Ms. Sunday expressed concern over how the use of a supplemental schedule would work in practice. Ms. Rilea stated that her experience had shown that the books and records were not as complicated as thought and that there were only a few general ledger accounts that would be reviewed.

Change to Proposed Rule 12A-1.0615(3)(d), F.A.C., Hotel's Initial Year of Participation
Rule 12A-1.0615(3)(d), F.A.C., addressing the calculation of an estimate for a hotel's initial year of participation in a reward points program, will be struck in its entirety, as will all references to estimates and anticipated amounts in a hotel's initial year of participation. A hotel will be required to determine the percentage to be used in its first twelve months of participation in a reward points program using the actual amount of contributions and reimbursements received in that period. This calculation will be done at the end of the first twelve months, and the full amount of any tax must be remitted on the first tax return due following the end of the first twelve months. The first twelve months' calculation will also be used for any remaining months in the calendar year in which the calculation is made.

SUMMARY OF RULE DEVELOPMENT WORKSHOP
HELD ON JUNE 24, 2010

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule development workshop in the Florida Administrative Weekly on May 28, 2010 (Vol. 36, No. 21, p. 2422). A rule development workshop was held on June 24, 2010, in Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida, commencing at 10:00 a.m. and concluding at 11:59 a.m., to allow members of the public to ask questions and make comments regarding the proposed changes to this rule chapter creating the following rule section:

12A-1.0615 Hotel Reward Points Programs

PARTIES ATTENDING

For the Department of Revenue	TAMMY MILLER, Senior Attorney, Technical Assistance and Dispute Resolution MARSHALL STRANBURG, General Counsel MARK ZYCH, Director, Technical Assistance and Dispute Resolution
For the Public	TOM BELL, Interval International PAUL BOGDANSKI, Grant Thornton JIM ERVIN, Holland & Knight CHARLES JOHNSON, Marriott SARAH RICHARDSON, Pinellas County Attorney's Office JOYCE SUNDAY, Walton County Clerk's Office VICKI WEBER, Hopping, Green and Sams PATSY WILLBANKS, Okaloosa Clerk of the Circuit Court
WRITTEN COMMENTS	SARAH RICHARDSON, Pinellas County Attorney's Office

Proposed Subsections (2) and (3) of Proposed Rule 12A-1.0615, F.A.C., Transactions Between a Hotel and a Guest Using Reward Points, and Transactions Between a Hotel and a Reward Points Program

Ms. Sarah Richardon, Pinellas County Attorney's Office, submitted written comments on behalf of the Pinellas County Tax Collector, dated July 8, 2010, stating her opinion that the proposed rule creates an exemption from the transient rental tax that is not within the power of the Department of Revenue to create. Ms. Richardson states that the formula contained in the proposed rule by which hotels would determine what portion, if any, of their reward point redemptions would be subject to tax was very complicated and that the practical application of the proposed rule provisions will almost always result in an exemption from tax. Ms. Richardson reiterated her argument, previously made at two workshops held on the proposed rule, that the reward points surrendered by a hotel guest for a hotel room constituted consideration. Ms. Richardson stated that the focus of the proposed rule is misdirected at the mathematical relationship between a hotel and a reward points program. Ms. Richardson requested that her comments made at previously workshops and Pinellas County's request for a declaratory statement on the issue addressed by the proposed rule be incorporated by reference.

No change to Subsections (2) and (3)
The Florida Senate issued Report Number 2005-131, Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program, in November 2004. This report provides that "all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed." (pg. 29)

Subsection (2) of the proposed rule will continue to provide that when a member of a hotel reward points program uses a certificate or confirmation number to use transient accommodations at no charge, no transient rental tax is to be collected from the member.

Subsection (3) of the proposed rule will continue to provide that only those reimbursements received by the hotel that exceed contributions made by the hotel will be subject to tax.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.0615, F.A.C.:

Proposed Paragraph (3)(d) of Proposed Rule 12A-1.0615, F.A.C., Hotel's First Year of Participation in a Reward Points Program

Ms. Richardson stated her concern regarding a hotel in its initial year of participation in a reward points program that could go bankrupt before the first full year was completed. Ms. Richardson gave the opinion that the current draft of the proposed rule did not contain language that would require a hotel in that situation to report and remit any tax on any reward points redemptions it received, because the proposed rule only contemplated completion of a full 12 months. Ms. Richardson suggested the inclusion of language that would require either the completion of one year or the completion of the program if fewer than 12 months.

Change to Proposed Paragraph (3)(d)
New subparagraph 5. will be added to paragraph (3)(d) to provide that a hotel that stops participating in a reward points program prior to the completion of a full twelve-month period will be required to calculate any tax due on reimbursements by using the full time period that the hotel participated in the reward points program. Any tax due will be required to be reported on the first return due following the date on which the hotel ceases participation in the reward points program.

Proposed Subsection (4) of Proposed Rule 12A-1.0615, F.A.C., Recordkeeping

Ms. Joyce Sunday, Walton County Clerk's Office, stated her concern as to how a county would conduct an audit of a hotel that participates in a reward points program. Ms. Sunday stated that she was concerned with educating the hotel industry as to reward point transactions. Mr. Charles Johnson, Marriott, stated that his company had gone through almost 30 audits with the state on this issue and had not had a problem in providing supporting documentation that showed the amount of reward points contributions and reimbursements between the hotel and the reward points program.

No change to Proposed Subsection (4)
Detailed recordkeeping requirements are provided in Sections 212.13 and 213.35, F.S., and Rule Chapter 12-24, F.A.C. The recordkeeping section of the proposed rule will not be changed.

Retrospective Application of the Proposed Rule

Mr. Bogdanski, Grant Thornton, asked how the proposed rule would affect refund claims that have been filed by companies and are currently awaiting decision. Mr. Zych, Department of Revenue, stated that the rule will be valid unless judicially or administratively proven otherwise. Mr. Bogdanski asked if the rule would apply to circumstances that took place prior to the time it was approved and became official. Mr. Zych stated that the rule would be valid as of the date it was promulgated and stated that transactions that occurred prior to that date would be examined on a case-by-case basis based on the evidence.

SUMMARY OF PROPOSED CHANGES TO PROPOSED RULE 12A-1.0615, F.A.C.

New subparagraph 5. will be added to paragraph (3)(d) to provide that a hotel that stops participating in a reward points program prior to the completion of a full twelve-month period will be required to calculate any tax due on reimbursements by using the full time period that the hotel participated in the reward points program. Any tax due will be required to be reported on the first return due following the date on which the hotel ceases participation in the reward points program.

SUMMARY OF PUBLIC HEARING

HELD ON SEPTEMBER 28, 2010

The Governor and Cabinet, sitting as head of the Department of Revenue, met on September 28, 2010, and approved the publication of the Notice of Proposed Rule for changes to Rule 12A-1.0615, F.A.C. (Hotel Reward Points Programs). A notice for the public hearing was published in the Florida Administrative Weekly on September 17, 2010 (Vol. 36, No. 37, p. 4517).

SUMMARY OF RULE HEARING

HELD ON NOVEMBER 2, 2010

The proposed amendments to Rule 12A-1.0615, F.A.C. (Hotel Reward Points Programs), were noticed for a rule hearing in the Florida Administrative Weekly on October 8, 2010 (Vol. 36, No. 40, pp. 4857-4860). A rule hearing was held on November 2, 2010, in Room 1220, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida, to allow members of the public to ask questions and make comments regarding the proposed changes to this rule chapter creating the following rule section:

12A-1.0615 Hotel Reward Points Programs

PARTIES ATTENDING

For the Department of Revenue	FRENCH BROWN, Deputy Director, Technical Assistance and Dispute Resolution, Hearing Officer TAMMY MILLER, Senior Attorney, Technical Assistance and Dispute Resolution MARK ZYCH, Director, Technical Assistance and Dispute Resolution
For the Public	SARAH RICHARDSON, Pinellas County Attorney's Office SAMANTHA REHTORIK, Liberty Partners of Florida Consulting, LLC JIM ERVIN, Holland & Knight
WEBEX Participants	LORRAINE HUDSON, Escambia Clerk's Office LAURA FLOYD, Marriott International, Inc. ALEX LASKOWSKI, Grant Thornton, LLP GREG GROBERSKI, Grant Thornton, LLP
WRITTEN COMMENTS	SARAH RICHARDSON, Pinellas County Attorney's Office JIM ERVIN, Holland & Knight

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.0615, F.A.C.:

Proposed Subsections (2) and (3) of Proposed Rule 12A-1.0615, F.A.C., Transactions Between a Hotel and a Guest Using Reward Points, and Transactions Between a Hotel and a Reward Points Program

Mr. Jim Ervin, Holland & Knight, submitted written comments, dated October 22, 2010, giving his support to the proposed rule. Mr. Ervin stated that the proposed rule was the result of several years' work by the Department, various Florida counties, and industry representatives, and further stated that the proposed rule was a reasonable resolution to the applicable issues.

Ms. Sarah Richardson, Pinellas County Attorney's Office, on behalf of Diane Nelson, Pinellas County Tax Collector, submitted written comments, dated October 26, 2010, reiterating her opposition to the proposed rule. Ms. Richardson stated that proposed rule creates an exemption from the transient rental tax that is not within the power of the Department of Revenue to create. Ms. Richardson stated that the formula contained in the proposed rule by which hotels would determine what portion, if any, of their reward point redemptions would be subject to tax was very complicated and that the practical application of the proposed rule provisions will almost always result in an exemption from tax. Ms. Richardson continued to argue that the reward points surrendered by a hotel guest for a hotel room constituted consideration and analogized the transaction to the purchase of tangible personal property using a manufacturer's coupon. Based on these arguments, Ms. Richardson requested that the Department decline to adopt the proposed rule.

No change to Proposed Rule 12A-1.0615(2) and (3), F.A.C.
The Florida Senate issued Report Number 2005-131, Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program, in November 2004. This report provides that "all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed." (pg. 29)

Subsection (2) of the proposed rule will continue to provide that when a member of a hotel reward points program uses a certificate or confirmation number to use transient accommodations at no charge, no transient rental tax is to be collected from the member. Subsection (3) of the proposed rule will continue to provide that only those reimbursements received by the hotel from the program fund that exceed contributions made by the program fund to the hotel will be subject to tax.

Proposed Subsection (2) of Proposed Rule 12A-1.0615, F.A.C., Whether Reward Points have Intrinsic Value and the Use of the Points Should Be Taxed

Ms. Richardson summarized the comments she had previously submitted in writing opposing the proposed rule.

Mr. Ervin stated his support of the proposed rule. Mr. Ervin disagreed with analogizing the transaction of a guest using reward points to a buyer of tangible personal property using a manufacturer's coupon; rather, Mr. Ervin stated that the better analogy was the receipt of a free night by the guest after purchasing a specified number of nights (a "buy one, get one free" transaction).

Mr. Alex Laskowski, Grant Thornton, stated that the issue of reward points had been litigated in New York and had been determined not to be taxable.

No change to Proposed Rule 12A-1.0615(2), F.A.C.
The Florida Senate issued Report Number 2005-131, Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program, in November 2004. This report provides that "all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed." (pg. 29)

Subsection (2) of the proposed rule will continue to provide that when a member of a hotel reward points program uses a certificate or confirmation number to use transient accommodations at no charge, no transient rental tax is to be collected from the member.

Retrospective Application of the Proposed Rule

Mr. Scott Groberski, Grant Thornton, questioned whether the proposed rule would be a clarification of existing law and would thus be retrospective in application. Mr. Groberski stated

that the Department had issued several prior rulings stating that reward point reimbursements were not taxable and that the proposed rule was a compromise position.

SUMMARY OF RULE HEARING

HELD ON FEBRUARY 8, 2011

The proposed amendments to Rule Chapter 12A-1, F.A.C. (Sales and Use Tax), were noticed for a rule hearing in the Florida Administrative Weekly on December 10, 2010 (Vol. 36, No. 49, p. 5933). A rule hearing was held on February 8, 2011, in Room 1220, Building One, 2450 Shumard Oak Boulevard, Tallahassee, Florida, commencing at 10:30 a.m. and concluding at 11:00 a.m., to allow members of the public to ask questions and make comments regarding the proposed changes to this rule chapter creating the following rule section:

12A-1.0615 Hotel Reward Points Programs

PARTIES ATTENDING

For the Department of Revenue	ROBERT DUCASSE, Program Administrator, Technical Assistance and Dispute Resolution, Hearing Officer TAMMY MILLER, Senior Attorney, Technical Assistance and Dispute Resolution
For the Public	JIM ERVIN, Holland & Knight SARAH RICHARDSON, Pinellas County Attorney's Office
WRITTEN COMMENTS	JIM ERVIN, Holland & Knight SARAH RICHARDSON, Pinellas County Attorney's Office CLAUDIA RILEA, Orange County Comptroller's Office

Proposed Subsections (2) and (3) of Proposed Rule 12A-1.0615, F.A.C., Transactions Between a Hotel and a Guest Using Reward Points, and Transactions Between a Hotel and a Reward Points Program

Ms. Claudia Rilea, Orange County Comptroller's Office, submitted written comments, dated February 4, 2011, requesting four changes to the proposed rule. For internal consistency, Ms. Rilea proposed using the term "current calendar year" throughout the formula used to calculate the taxable reimbursements during periods other than the initial year of participation. Also for internal consistency, Ms. Rilea proposed using the term "initial twelve months" throughout the formula used to calculate taxable reimbursements during a hotel's initial year of participation in a program. The remaining two issues raised by Ms. Rilea involve language that mistakenly appeared to have been removed from the proposed rule.

Mr. Jim Ervin, Holland & Knight, submitted written comments, dated October 22, 2010, giving his support to the proposed rule. Mr. Ervin stated that the proposed rule was the result of several years' work by the Department, various Florida counties, and industry representatives, and further stated that the proposed rule was a reasonable resolution to the applicable issues.

Ms. Sarah Richardson, Pinellas County Attorney's Office, on behalf of Diane Nelson, Pinellas County Tax Collector, submitted written comments, dated October 26, 2010, reiterating her opposition to the proposed rule. Ms. Richardson stated that proposed rule creates an exemption from the transient rental tax that is not within the power of the Department of Revenue to create. Ms. Richardson stated that the formula contained in the proposed rule by which hotels would determine what portion, if any, of their reward point redemptions would be subject to tax was very complicated and that the practical application of the proposed rule provisions will almost always result in an exemption from tax. Ms. Richardson continued to argue that the reward points surrendered by a hotel guest for a hotel room constituted consideration and analogized the transaction to the purchase of tangible personal property using

a manufacturer's coupon. Based on these arguments, Ms. Richardson requested that the Department decline to adopt the proposed rule.

Change to Proposed Rule 12A-1.0615(3), F.A.C.
The term "current calendar year" will be used consistently in the formula used to calculate taxable reimbursements during periods other than a hotel's initial participation in a reward points program. The term "initial twelve months" will be used consistently in the formula used to calculate taxable reimbursements during a hotel's initial participation in a reward points program. The language that appeared to be missing on the Department's website had not been removed from the proposed rule and was published in the Florida Administrative Weekly and made a part of the Notice of Proposed Rule.

The Florida Senate issued Report Number 2005-131, Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program, in November 2004. This report provides that "all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed." (pg. 29)

Subsection (2) of the proposed rule will continue to provide that when a member of a hotel reward points program uses a certificate or confirmation number to use transient accommodations at no charge, no transient rental tax is to be collected from the member. Subsection (3) of the proposed rule will continue to provide that only those reimbursements received by the hotel that exceed contributions made by the hotel will be subject to tax.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.0615, F.A.C.:

Proposed Subsections (2) and (3) of Proposed Rule 12A-1.0615, F.A.C., Transactions Between a Hotel and a Guest Using Reward Points, and Transactions Between a Hotel and a Reward Points Program

Ms. Richardson summarized the comments she had previously submitted in writing opposing the proposed rule. Ms. Richardson stated her belief that the proposed rule creates an exemption not found in the Florida Statutes. Ms. Richardson stated that tax should be due from the hotel guest when the guest uses reward points in exchange for an accommodation. Ms. Richardson also stated her opinion that the formula used to calculate taxable reimbursements by a hotel is inherently unworkable and will require more frequent audits. Ms. Richardson believes that the proposed rule may result in occupancies of transient accommodations never being

subject to tax. Based on these arguments, Ms. Richardson requested that the Department decline to adopt the proposed rule.

Mr. Ervin stated his support of the proposed rule and stated his belief that the proposed rule is in conformance with the existing law. Mr. Ervin believes the formula set out in the proposed rule is both workable and efficient.

No Change to Proposed Rule 12A-1.0615(2) and (3), F.A.C.
The Florida Senate issued Report Number 2005-131, Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program, in November 2004. This report provides that "all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed." (pg. 29)

Subsection (2) of the proposed rule will continue to provide that when a member of a hotel reward points program uses a certificate or confirmation number to use transient accommodations at no charge, no transient rental tax is to be collected from the member. Subsection (3) of the proposed rule will continue to provide that only those reimbursements received by the hotel that exceed contributions made by the hotel will be subject to tax.

SUMMARY OF PROPOSED CHANGES TO PROPOSED RULE 12A-1.0615, F.A.C.

The term “current calendar year” will be used consistently in the formula used to calculate taxable reimbursements during periods other than a hotel’s initial participation in a reward points program. The term “initial twelve months” will be used consistently in the formula used to calculate taxable reimbursements during a hotel’s initial participation in a reward points program. A Notice of Change was published in the Florida Administrative Weekly on April 1, 2011 (Vol. 37, No. 13, p. 817).

PROPOSED LOWER COST REGULATORY ALTERNATIVES FOR PROPOSED RULE 12A-1.0615, F.A.C.

On October 21, 2010, Ms. Sarah Richardson, Managing Assistant County Attorney, submitted a Good Faith Proposed Lower Cost Regulatory Alternative pursuant to section

120.541, F.S. This request was submitted within 21 day of publication of the Notice of Proposed Rule in the Florida Administrative Weekly on October 8, 2010 (Vol. 36, No. 40, pp. 4857-4860).

The proposal suggests that no rule be adopted or a modified version of the proposed rule be adopted based on the argument that the rule creates an exemption not provided by statute. The proposal argues that tax should be due and collectible from the hotel guest when the guest exchanges reward points for the use of a hotel accommodation. The proposal states that the collection, remittance, and enforcement of tax in this manner would create no greater costs than currently exist. By contrast, the proposal argues that costs will be higher for the county under the proposed rule provisions, as audits will be needed more frequently, and auditors will be required to examine more records.

In response, the Department issued a Statement of Estimated Regulatory Costs and posted the statement on the Department's website on March 16, 2011, as follows:

DEPARTMENT OF REVENUE
STATEMENT OF ESTIMATED REGULATORY COSTS

Rule 12A-1.0615, Florida Administrative Code
Hotel Reward Points Programs
March 16, 2011

Description of proposed rule:

Proposed Rule 12A-1.0615, F.A.C. (Hotel Rewards Points Programs), is being created to provide guidelines regarding the application of Florida tax in situations involving hotel rewards points programs within the transient rentals industry. The proposed rule reflects the findings of the Senate Committee on Government Efficiency Appropriations in Report Number 2005-131, "Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program."

The proposed rule provides that tax is not due from or required to be paid by a hotel guest when the guest exchanges reward points for an accommodation. The proposed rule provides that a hotel must compare the total contributions made to and the total contributions received from a reward point program in a calendar year. Tax will be due on a percentage of reimbursements received in the next calendar year if the total reimbursements received in the prior calendar year exceeded the total contributions made in the same year. The proposed rule also provides the

method to be used in a hotel's initial period of participation in a reward point program. Definitions are provided and the proposed rule includes recordkeeping requirements.

A. Is the proposed rule likely to, directly or indirectly, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the proposed rule?

No.

B. Is the proposed rule likely to, directly or indirectly, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the proposed rule?

No.

C. Is the proposed rule likely to, directly or indirectly, increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of this proposed rule?

No.

D. Provide a good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

Hotels that participate in reward point programs will be required to comply with the proposed rule provisions. Reward point programs can be administered by hotel chains or by online travel companies; therefore, every hotel in Florida could potentially be affected by the proposed rule.

E. Provide a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

The proposed rule will create minimal cost on the Department to implement and enforce. The Department will enforce the proposed rule during its compliance audits of hotels in the state.

The proposed rule should have an insignificant impact, if any, on other state and local government entities implementation and enforcement. Counties that self-administer the tourist development tax imposed by the county will be the only local government entities affected by the proposed rule. There are currently 39 counties that self-administer the tourist development tax imposed by the county. These counties will be required to apply the formulas set out in the proposed rule when conducting audits of hotels located in the counties. It is not anticipated that this will result in any significant additional costs to the counties, as the hotels will be required to provide the necessary documentation and the local auditor will only be required to perform one calculation for each calendar year under audit.

It is anticipated that state and local revenues will increase if the proposed rule is adopted since some hotels are not currently remitting any tax on reimbursements received from hotel reward points programs in the manner specified in the proposed rule.

F. A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule.

In order to comply with the rule, hotels that participate in reward points programs will be required to provide documentation during an audit showing the total amounts of contributions the hotel makes to the program and the total amount of reimbursements the hotel receives from the program. It is anticipated that many hotels routinely keep this information for other business purposes. Therefore, hotels should incur little or no additional costs in reporting taxable reimbursements based on the annual calculation as provided by the rule. Also, no significant additional costs should be incurred with providing the documentation for review in an audit.

G. An analysis of the impact on small business, small counties, and small cities.

1. Small Business

A small business is defined in Section 288.703, Florida Statutes, as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments."

_____ There are no small businesses that would be subject to the proposed rule.
The estimated number of small businesses that would be subject to the proposed rule:
_____ 1-99 _____ 100-499 _____ 500-999
_XX_ 1,000-4,999 _____ More than 5,000
_____ Unknown, please explain:

Analysis of the impact on small business:

The Department of Business and Professional Regulation has stated that there are 4,440 hotels and motels in Florida. The Florida Restaurant and Lodging Association states that approximately 70% (3,108) of the hotels and motels in Florida are franchised, which places most of those businesses within the definition of "small business." Hotels and motels that participate in reward point programs will be required to comply with the proposed rule provisions. It is unknown how many hotels and motels currently participate in reward point programs.

2. Small Cities and Counties

A small city is defined in Section 120.52(18), Florida Statutes, as "any municipality that has an un-incarcerated population of 10,000 or less according to the most recent decennial census.
A small county is defined in Section 120.52(19), Florida Statutes, as "any county that has an un-incarcerated population of 75,000 or less according to the most recent decennial census.

_____ There is no small county or small city that will be impacted by this proposed rule.
__X__ A small county or small city will be impacted

Analysis:
There are currently seven self-administering counties that qualify as small counties under the statute. These counties will be required to apply the formulas set out in the proposed rule when conducting audits of hotels located in the counties. It is not anticipated that this will result in any significant additional costs to the counties, as the hotels will be required to provide the necessary documentation and the local auditor will only be required to perform one calculation for each calendar year under audit.

H. Any additional information that the agency determines may be useful.

The hotel industry and Orange County, the largest tourism county in the state, have indicated that they support the proposed rule.

I. A description of any good faith written proposal for a lower cost regulatory alternative (LCRA) to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

____ No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

__X__ LCRA was received - See attachment "A".

_____ LCRA adopted in entirety.

_____ Adopted/rejected In part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons for adopting or rejecting this alternative In part):*

__X__ Rejected in entirety. *(Provide a brief statement of the reasons for rejecting this alternative).*

A good faith written proposal was submitted by the Pinellas County Managing Assistant County Attorney, on behalf of the Pinellas County Tax Collector. The proposal suggests that no rule be adopted or a modified version of the proposed rule be adopted based on the argument that the rule creates an exemption not provided by statute. The proposal argues that tax should be due and collectible from the hotel guest when the guest exchanges reward points for the use of a hotel accommodation. The proposal states that the collection, remittance, and enforcement of tax in this manner would create no greater costs than currently exists. By contrast, the proposal argues that costs will be higher for the county under the proposed rule provisions, as audits will be needed more frequently and auditors will be required to examine more records.

The Department cannot agree with the request for no rule to be adopted. The issue addressed by the proposed rule has been examined over a number of years and the provisions of the proposed

rule are being offered in accord with the findings of Report Number 2005-131, "Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and the Hotel Rewards Points Program" issued by the Senate Committee on Government Efficiency Appropriations. That report concludes that taxing the reward points redeemed by hotel guests could result in pyramiding of taxation, which is prohibited by Chapter 212.

The Department cannot agree with the proposal's statement that audits will be needed more frequently. A hotel's participation in a reward point program should not subject the hotel to audit more frequently than any of the hotel's other business operations. The Department also disagrees with the proposal's statement that audits will be more cumbersome. Hotels that participate in a reward point program will be required to provide documentation showing the total amount of contributions and reimbursements for a year's period, and auditors will be required to verify the hotel's percentage of taxable reimbursements for each month in the audit period. Given that the current time period applicable to audits is three years, this should result in the verification of a maximum of thirty-six transactions. By contrast, if a modified version of the proposed rule was adopted, then an auditor may have to examine each transaction that involves reward points separately. A hotel could potentially have hundreds or thousands of guests each year who exchange reward points for accommodations, so that the hotel would have to provide and the auditor would have to examine hundreds or thousands of pages of documentation to determine whether tax was collected and remitted correctly on each stay. Even if a sample of these transactions were conducted, this would still result in the examination of many more transactions than the maximum of thirty-six needed under the proposed rule provisions. The hotels will also not incur significant additional costs, as it is believed that many hotels routinely keep the documentation needed under the proposed rule for other business purposes and will therefore incur no additional costs in providing the documentation in an audit

The proposal also argues that the proposed rule should not be adopted because it could result in less tax being collected and remitted to the county. However, a possible reduction in the amount of tax remitted is not a regulatory cost to either a county or a business and thus not a valid argument in support of the proposed lower cost regulatory alternative.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

CREATING RULE 12A-1.0615

12A-1.0615 Hotel Reward Points Programs.

(1) Scope.

(a) The provisions of this rule govern the taxation of transactions between program administrators of hotel reward points programs and hotels providing transient lodging accommodations that participate in these programs.

(b) For purposes of this rule, the term "transient rental tax" means the state sales tax imposed on transient rentals under Section 212.03, F.S., the discretionary sales surtax as authorized in Section 212.055, F.S., the locally-imposed tourist development tax provided for in Section 125.0104, F.S., the tourist impact tax provided for in Section 125.0108, F.S., the convention development tax in Section 212.0305, F.S., or any municipal resort tax in Chapter 67-930, L.O.F.

(2) Transactions Between a Hotel and a Guest Using Reward Points.

(a) When a member of a hotel reward points program uses a certificate or confirmation number entitling the member to transient accommodations at a participating hotel at no charge, the hotel is not required to collect transient rental tax from the member.

(b) When a member of a hotel reward points program uses a certificate or confirmation number entitling the member to transient accommodations and pays the hotel any room rate or

rental charges using any form of payment other than reward points, the member is required to pay the hotel transient rental tax on the amount of the room rate or rental charges paid using any form of payment other than reward points.

(3) Transactions between a Hotel and a Reward Points Program.

(a) For the purposes of this subsection, the following words are defined:

1. "Hotel" is used in the singular and is meant to describe a single operation, at one specific location, that provides transient accommodations as described in Section 212.03, F.S. The term "hotel" does not mean a group of affiliated hotels or a group of hotels operated by one franchisee.

2. "Reimbursements" mean money or credits received by a hotel from a reward points program fund.

3. "Contributions" mean money or credits paid by a hotel to a reward points program fund.

(b) Transient rental tax is due on a hotel's reimbursements when the hotel receives more in reimbursements than it paid in contributions in the prior calendar year.

(c) Calculation of Taxable Reimbursements for Periods Other than a Hotel's Initial Year of Participation.

1. Each January, a hotel must determine the percentage to be applied to reimbursements received during the subsequent calendar year using the following calculation:

Total Reimbursements Received in Prior Calendar Year - Total Contributions Paid in Prior Calendar Year

÷ Total Reimbursements Received in Prior Calendar Year

= Percentage to be Applied to Reimbursements Received in Current Calendar Year

If the resulting percentage is zero or less, then no transient rental tax is due on reimbursements received in the current calendar year.

2. The full amount of reimbursements received by the hotel in the current reporting period must be multiplied by the percentage to determine the amount of reimbursements subject to transient rental tax for that reporting period.

3. Example: A hotel's total reimbursements and contributions in the preceding calendar year are $10,000 and $7,500, respectively. The hotel's percentage for the current calendar year will be calculated in January as ($10,000 - $7,500)/$10,000 or 25%. If the current reporting period's reimbursements are $1,000, the amount of reimbursements subject to tax in the current reporting period is $250.

(d) Calculation of Taxable Reimbursements for a Hotel's Initial Twelve Months of Participation in a Reward Points Program

1. At the end of a hotel's initial twelve months of participation in a reward points program, the hotel must determine the percentage to be applied to reimbursements received during the initial twelve months of participation using the following calculation:

Total Reimbursements Received During the Initial Twelve Months - Total Annual Contributions Paid During the Initial Twelve Months

÷ Total Reimbursements Received During the Initial Twelve Months

= Percentage to be Applied to Reimbursements Received in the Initial Twelve Months

If the resulting percentage is zero or less, then no transient rental tax is due on reimbursements received in the initial twelve months of participation.

2. The full amount of reimbursements received by the hotel in the initial twelve months of participation must be multiplied by the percentage to determine the amount of reimbursements

subject to transient rental tax for the initial twelve months. The full amount of any tax due must be remitted with the hotel's first tax return due following the end of the initial twelve months of participation. The hotel must keep a supplemental schedule allocating the remittance to the appropriate reporting periods of the initial twelve months of participation in the hotel's books and records kept in the normal course of business. This schedule must be made available to the proper taxing authority upon request.

3. The percentage calculated for the initial twelve months of participation must also be used to calculate taxable reimbursements for all remaining reporting periods in the calendar year in which the calculation is made.

4. Example: A hotel begins participating in a reward points program in June 2010. In June 2011, the hotel must calculate the percentage using the total reimbursement and contribution amounts for June 2010 through May 2011. The resulting percentage must be applied to all reimbursements received from June 1, 2010, through May 31, 2011, to determine the amount of reimbursements subject to transient rental tax for that period. The hotel must report any taxable reimbursements for June 2010 through May 2011 on the hotel's first tax return due following May 2011. The hotel must also apply the June 2010 through May 2011 percentage to all reimbursements received each reporting period for the remainder of calendar year 2011. In January 2012, the hotel must recalculate the annual percentage using the total reimbursement and contribution amounts for January through December, 2011.

5. If a hotel ceases to participate in a reward points program before the completion of a full twelve month period, then the hotel must determine the percentage to be applied to reimbursements received by using the period of time that the hotel participated in the reward points program. Any tax due must be reported on the hotel's first tax return due following the

date on which the hotel ceases to participate in the reward points program.

(e) Tax must be reported and remitted as provided in Rule 12A-1.056, F.A.C.

(4) Recordkeeping.

(a) A hotel must maintain records received from or sent to the program administrators indicating reimbursements and contributions, and records indicating the calculations required under this rule to determine the amount of transient rentals tax due, until tax imposed or administered by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S.

(b) Electronic storage of the required records will be sufficient compliance with the provisions of this subsection.

Rulemaking Authority 125.0104(3)(k), 125.0108(2)(e), 212.0305(3)(f), 212.12(12), 212.17(6), 212.18(2), 213.06(1) FS, Ch. 67-930, L.O.F. Law Implemented 125.0104(1)-(4), (8), (10), 125.0108, 212.03(1)-(5), (7), 212.0305, 212.054 FS, Ch. 67-930, L.O.F. History-New .

FLORIDA
DEPARTMENT OF REVENUE

Executive Director
Lisa Vickers

April 19, 2011

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Doug Darling, Chief of Staff/Cabinet Affairs Director
Rachel Goodson, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Cabinet Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Jim Boxold, Chief Cabinet Aide
Brooke Mcknight, Cabinet Aide

FROM: French Brown, Deputy Director, Technical Assistance and Dispute Resolution

SUBJECT: Requesting Adoption and Approval to File and Certify Proposed Rule – Tax Warrants and Liens List Publication and Maintenance

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Statement of HB 1565 (Chapter 2010-279, L.O.F.) Impact. No impact.

The Department has reviewed this proposed rule for compliance with HB 1565. The proposed rule likely will not have an adverse impact on small business, small counties, or small cities, and it is not likely to have an increased regulatory cost in excess of $200,000 within 1 year. Additionally, the proposed rule is not likely to have an adverse impact or increased regulatory costs in excess of $1,000,000 within 5 years.

What is the Department Requesting? The Department requests final adoption of proposed Rule 12-22.008, F.A.C. (Warrants and Liens List), and approval to file and certify it with the Secretary of State under Chapter 120, F.S.

ATTACHMENT #4

Tax Warrants and Liens List

Why is this proposed rule necessary?: Section 213.053, F.S., was amended by Section 10, Chapter 2010-138, and Section 4, Chapter 2010-166, L.O.F., to provide an exception to the tax information confidentiality statutes. The amendment authorizes the Department to publish a list of taxpayers with outstanding tax warrants or liens. The purpose of Rule 12-22.008, F.A.C., is to provide how the list will be published, the information that will be contained in the list, and how the list will be updated and maintained by the Department.

What does this proposed rule do?: The proposed rule provides that the Department will prepare, maintain, and publish via the Internet a list containing taxpayers who have outstanding tax warrants or liens. The list will include all taxpayers who have unsatisfied tax warrant and lien totals of $100,000 or more. The list also will include the two taxpayers from each county with the highest unsatisfied tax warrant and lien totals. The list will not include any taxpayer whose unsatisfied tax warrant and lien totals are less than $1,500.

The list will provide the taxpayers' names, the county in which each taxpayer is located, the tax warrant or lien numbers, and the amount of each tax warrant or lien. Since tax warrants and liens are filed in the public records of each county, the information contained in the list is currently a public record.

The list will not include any taxpayer that has entered into a closing agreement, a stipulated payment plan, or any other agreement or order with the Department. The proposed rule provides that the list will be posted on the Department's website and will be updated monthly. Any taxpayer included on the list that pays his or her tax warrant or lien or enters into an agreement for payment will be removed from the list within 2 business days of the date the payment is received or the agreement has been put in place. The rule provides that no other information concerning taxpayers included on the list will be made available.

Were comments received from external parties?: A rule development workshop was held on July 29, 2010. No comments were received at the workshop. On September 28, 2010, the Governor and Cabinet approved the Department's request to publish a Notice of Proposed Rule and to conduct a hearing on this rule. A rule hearing was held on November 2, 2010. No comments were received. A second rule hearing was held on February 8, 2011, at which the Department announced a change to the rule text. No comments were received.

Attached are copies of:

- Summary of the proposed rule, which includes:
    - Statements of facts and circumstances justifying the rule;
    - Federal comparison statement; and
    - Summaries of meetings, workshops, and hearings
- Rule text with notices of change incorporated

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12-22, FLORIDA ADMINISTRATIVE CODE

CONFIDENTIALITY AND DISCLOSURE OF TAX INFORMATION

CREATING RULE 12-22.008

SUMMARY OF PROPOSED RULE

The proposed creation of Rule 12-22.008, F.A.C. (Warrants and Liens List), provides: (1) that the Department will prepare, publish, and maintain the Warrants and Liens List authorized by Chapters 2010-138 and 2010-166, L.O.F., containing a list of taxpayers who have an outstanding tax warrant, lien, or judgment lien for the taxes, surtaxes, surcharges, or fees regulated, controlled, or administered by the Department; (2) the information that will be contained in the Warrants and Liens List and those taxpayers that will not be included; (3) that the Warrants and Liens List will be updated monthly; (4) the requirements that a taxpayer must meet to be removed from the Warrants and Liens List; and (5) that no other reports or information will be made available concerning taxpayers included in or removed from the Warrants and Liens List.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Section 10, Chapter 2010-138, and section 4, Chapter 2010-166, L.O.F., authorize the Department to publish a list of taxpayers against whom the Department has filed a warrant, notice of lien, or judgment lien certificate for taxes, surtaxes, surcharges, fees, interest, and/or penalty administered by the Department. The purpose of the creation of Rule 12-22.008, F.A.C.

(Warrants and Liens List), is to provide how the Warrants and Liens List will be published, the taxpayers and the information that will be contained in the list, and how the list will be updated and maintained by the Department. When in effect, this rule establishes the procedures that will be used by the Department to prepare, publish, update, and maintain the Warrants and Liens List containing taxpayers who have an outstanding warrant, lien, or judgment lien for taxes, interest, penalty, and/or fees administered by the Department.

FEDERAL COMPARISON STATEMENT

The provisions contained in this rule do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

JULY 29, 2010

A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on July 9, 2010 (Vol. 36, No. 27, p. 3161), to advise the public of the creation of Rule 12-22.008, F.A.C. (Warrants and Liens List), and that a rule development workshop would be held on July 29, 2010. No written comments were received by the Department. No one from the public attended.

SUMMARY OF PUBLIC HEARING

HELD ON SEPTEMBER 28, 2010

The Governor and Cabinet, sitting as head of the Department of Revenue, met on September 28, 2010, and approved the publication of the Notice of Proposed Rule for changes to

Rule 12-22.008, F.A.C. (Warrants and Liens List). A notice for the public hearing was published in the Florida Administrative Weekly on September 17, 2010 (Vol. 36, No. 37, pp. 4516-4517).

SUMMARY OF RULE HEARING

HELD ON NOVEMBER 2, 2010

The proposed amendments to Rule 12-22.008, F.A.C. (Warrants and Liens List), were noticed for a rule hearing in the Florida Administrative Weekly on October 8, 2010 (Vol. 36, No. 40, pp. 4850-4852). A rule hearing was held on November 2, 2010, in Room 1220, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one from the public attended and no comments were received.

SUMMARY OF RULE HEARING

HELD ON FEBRUARY 8, 2011

The proposed amendments to Rule 12-22.008, F.A.C. (Warrants and Liens List), were noticed for a rule hearing in the Florida Administrative Weekly on October 8, 2010 (Vol. 36, No. 40, pp. 4850-4852). A rule hearing was held on February 8, 2011, in Room 1220, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one from the public attended and no comments were received. The Department announced a change to subparagraph 1. of paragraph (a) of subsection (2) of proposed Rule 12-22.008, F.A.C., that, when adopted, that subparagraph will read:

(a) The Warrants and Liens List will include:

1. Two taxpayers from each of the 67 Florida counties with the highest unsatisfied warrant and lien totals when the unsatisfied warrant and liens totals for

each taxpayer exceeds $1,500; and

A notice of change was published on February 18, 2011 (Vol. 37, No. 7, pp. 441-442).

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12-22, FLORIDA ADMINISTRATIVE CODE

CONFIDENTIALITY AND DISCLOSURE OF TAX INFORMATION

CREATING RULE 12-22.008

12-22.008 Warrants and Liens List.

(1) Scope.

(a) Section 213.053(20), F.S., authorizes the Department to publish a list of taxpayers against whom the Department has filed a warrant, notice of lien, or judgment lien certificate for the taxes, surtaxes, surcharges, or fees, listed in Section 213.05, and Chapter 443, F.S., and administered by the Department. This rule outlines the only means by which the Department will publish or provide this information.

(b) The information that Section 213.053(20), F.S., authorizes the Department to publish is available in the public records of Florida. Section 213.053(20), F.S., authorizes the Department to consolidate portions of that public information in a list and to publish that list to the public. Neither Section 213.053(20), F.S., nor this rule permits the Department or its employees to otherwise disclose confidential information.

(2) Warrants and Liens List.

(a) The Warrants and Liens List will include:

1. Two taxpayers from each of the 67 Florida counties with the highest unsatisfied warrant and lien totals when the unsatisfied warrant and liens totals for each taxpayer exceeds $1,500; and

2. All other taxpayers who have unsatisfied warrant and lien totals of $100,000 or greater.

(b) For each taxpayer included on the Warrants and Liens List, the following information will be provided:

1. Taxpayer name, owner name based upon information provided to the Department and on file with the Department of State at the time the warrant or lien was filed, and business location address;

2. County in which the taxpayer is located;

3. Warrant or lien number(s); and

4. Amount of each outstanding warrant or lien as recorded.

(c) The Warrants and Liens List will not include any taxpayer that has:

1. Entered into a closing agreement;

2. Entered into a stipulated payment agreement with the Department that has not been terminated pursuant to Rule 12-17.009, F.A.C.; or

3. In place any other agreement or order that provides for payment of the outstanding warrant(s) or lien(s) amount.

(d) The Warrants and Liens List will be posted to the Department's Internet site at www.myflorida.com/dor.

(3) Maintenance of the Warrants and Liens List.

(a) The Warrants and Liens List will be updated monthly to include those taxpayers as provided in paragraph (2)(a).

(b) Any taxpayer included on the Warrants and Liens List who pays the outstanding warrant(s) or lien(s) amount, enters into a stipulated payment agreement for the outstanding warrant(s) or lien(s) amount, or has put in place any other agreement or order that provides for

payment of the outstanding warrant(s) or lien(s) amount will be removed from the list within two business days of the date:

1. Payment of the outstanding liability is received by the Department;

2. A stipulation payment agreement is executed by the taxpayer and the Department for the amount of the outstanding liability; or

3. Any other agreement or order that provides for payment of the outstanding warrant(s) or lien(s) has been put in place.

(4) No other reports or information will be made available concerning the taxpayers included in or removed from the Warrants and Liens List.

Rulemaking Authority 213.053(20) FS. Law Implemented 55.10, 55.202, 55.204, 95.091(1)(a), (b), 198.22, 198.33, 199.262, 201.16, 211.125(7)(a), 211.33(7)(a), 213.053(20), (21), 213.21(2), (4), 213.69, 213.731, 213.733, 220.813, 443.1316 FS. History-New .