

Florida Beer Wholesalers Association

February 10, 2013

To: FBWA Members

From: Mitch Rubin

RE: Resale Certificates

Introduction: A Member inquired about maintaining vendor resale certificates. This Memo addresses only the narrow issues of distributors selling alcoholic and non-alcoholic beverages to licensed vendors. This Memo does not address other aspects of sales and use tax law, including other exemptions for regular dealings with retailers.

Facts #1: A distributor licensed by DABT sells exclusively alcoholic beverages to vendors licensed by DABT.

Issue #1: Whether a licensed distributor of alcoholic beverages must maintain copies of resale certificates for licensed vendors of alcoholic beverages?

Brief Answer #1: No. There is a specific exemption for licensed distributors of alcoholic beverages selling exclusively alcoholic beverages to licensed vendors.

Facts #2: A distributor licensed by DABT sells alcoholic and non-alcoholic beverages to vendors licensed by DABT.

Issue #2: Whether a licensed distributor that sells both alcoholic and non-alcoholic beverages to a licensed vendor must maintain copies of resale certificates?

Brief Answer #2: Yes. Resale certificates must be maintained by distributors that sell both alcoholic and non-alcoholic beverages to vendors.

Analysis: Distributors of goods are required to obtain and maintain resale certificates from retailers in order to be exempt from remitting sales tax to the Florida Department of Revenue. The burden is on the distributor/seller to prove an exemption.

A specific exemption, however, exists in Florida Department of Revenue Rule 12A-1.039(4), Sales for Resale. This exemption applies to: "The sale of alcoholic beverages by distributors" licensed by DABT selling alcoholic beverages to vendors licensed by DABT.

The Rule provides:

12A-1.039 Sales for Resale.

(1)(a) It is the specific legislative intent that each and every sale, use, storage,

consumption, or rental is taxable, unless such sale, use, storage, consumption, or rental is specifically exempt. The exempt nature of the transaction must be established by the selling dealer.

(b) A sale for resale is exempt from the tax imposed by Chapter 212, F.S., only when the sale for resale is in strict compliance with the provisions of this rule. For purposes of this rule, a “sale for resale” includes the following sales, leases, or rentals when made to a person who is an active registered dealer. This is not intended to be an exhaustive list.

1. The sale of tangible personal property to a dealer when such property will be resold to the dealer’s customers.

2. The sale, lease, or rental of tangible personal property to a dealer when such property will be held exclusively for leasing or rental purposes, pursuant to paragraph 12A-1.071(2)(a), F.A.C.

3. The sale of taxable services identified in subsection 12A-1.0161(1), F.A.C., to a dealer when such services are being resold to the dealer’s customers under the conditions stated in subsection 12A-1.0161(4), F.A.C.

4. The lease or rental of real property to a dealer when such property will subsequently be leased, rented, or licensed by the dealer’s tenants.

5. The lease or rental of real property to a dealer when such property will subsequently be leased, rented, or licensed as transient accommodations by the dealer’s tenants.

6. The sale of tangible personal property to a dealer when such property will be incorporated as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, processing, or compounding.

7. The sale of inserts of printed materials that are distributed as a component part of a newspaper or magazine, as provided in Section 212.05(1)(g), F.S.

8. The sale of tangible personal property to a repair dealer, when such property will be incorporated into and sold as part of a repair of tangible personal property by such dealer.

9. The alteration, remodeling, maintenance, adjustment, or repair of tangible personal property (when labor and materials are provided) that is held in inventory for resale or exclusively for leasing purposes by a dealer.

(c) For purposes of this rule, “active registered dealer” means a person who is registered with the Department as a dealer for sales tax purposes and who is required to file a sales and use tax return during each applicable reporting period, as provided in Section 212.11(1), F.S.

(2) ANNUAL RESALE CERTIFICATES ISSUED BY THE DEPARTMENT.

(a) For each calendar year, the Department of Revenue will issue to each active registered dealer an Annual Resale Certificate (Form DR-13). A newly registered dealer will receive a Sales and Use Tax Certificate of Registration (Form DR-11) and an Annual Resale Certificate. The business name and location address, the registration effective date, and the certificate number will be indicated on the Annual Resale Certificate.

(b) Dealers who lose their Annual Resale Certificate may request a replacement by contacting the Department at (800) 352-3671. Persons with hearing or speech impairments may call the Florida Relay Service at (800) 955-8770 (Voice) and (800) 955-8771 (TTY). Written requests should be addressed to Central Registration, Florida Department of Revenue, 5050 West Tennessee Street, Tallahassee, Florida 32399-0100.

(3) Except as provided in subsection (4), a dealer making a sale for resale is required to document the exempt sale by CHOOSING ONE of the following three methods:

(a) COPIES OF ANNUAL RESALE CERTIFICATES OBTAINED BY THE SELLING DEALER. The selling dealer who makes a tax exempt sale for the purposes of resale must obtain a copy of the purchaser's current Annual Resale Certificate, or a Transaction Resale Authorization Number or Vendor Resale Authorization Number issued by the Department.

1. The copy of the Annual Resale Certificate must be signed by the purchaser or the purchaser's authorized representative.

2. A selling dealer may make sales for resale to a purchaser whose current Annual Resale Certificate is on file without seeking a new Annual Resale Certificate for each subsequent transaction during that calendar year. A new Annual Resale Certificate must be obtained each calendar year. Except for sales made to purchasers who purchase on account from the dealer on a continual basis, a selling dealer may only make exempt sales for resale to purchasers during the calendar year for which the purchaser's Annual Resale Certificate appears valid on its face.

3. For sales made to purchasers who purchase on account from a dealer on a continual basis, the selling dealer may rely upon the Annual Resale Certificate beyond the expiration date of the certificate and is not required to obtain a new Annual Resale Certificate each calendar year. For purposes of this paragraph, the phrase "purchase on account from a dealer on a continual basis" means that the selling dealer has a continuing business relationship with a purchaser and makes recurring sales on account to that purchaser in the normal course of business. For purposes of this paragraph, a sale "on account" refers to a sale where the dealer extends credit to the purchaser and records the debt as an account receivable, or where the dealer sells to a purchaser who has an established cash or C.O.D. account, similar to an "open credit account." For purposes of this paragraph, purchases are made from a selling dealer on a "continual basis" if the selling dealer makes sales to the purchaser no less frequently than once in every twelve month period in the normal course of business.

(b) TRANSACTION RESALE AUTHORIZATION NUMBER ISSUED PRIOR TO OR AT THE POINT-OF-SALE – VALID FOR SINGLE TRANSACTION ONLY. In lieu of obtaining a copy

of the purchaser's Annual Resale Certificate for each tax-exempt sale made for the purposes of resale, the selling dealer may obtain a Transaction Resale Authorization Number or a Vendor Resale Authorization Number from the Department.

1. A "transaction resale authorization number" must be obtained by the selling dealer prior to or at the point-of-sale by using the Department's on-line Certificate Verification System at <http://www.myflorida.com/dor/gta.html> or by calling the Department's automated nationwide toll-free telephone verification system at 1(877)357-3725.

2. When using the Department's on-line Certificate Verification System, the dealer may key up to five (5) purchaser's sales tax certificate of registration numbers into the system. When using the Department's automated nationwide toll-free verification system, the selling dealer is prompted to key in a single purchaser's sales tax certificate of registration number. The system will either issue a 13-digit transaction resale authorization number or alert the selling dealer that the purchaser does not have a valid resale certificate. Selling dealers using the automated telephone verification system who do not have a touch-tone phone will be connected to a live operator during the hours of 8:00 a.m. to 7:00 p.m. (Eastern Time), Monday through Friday. Persons with hearing or speech impairments may call the Florida Relay Service at (800) 955-8770 (Voice) and (800) 955-8771 (TTY).

3. A transaction resale authorization number is not valid to exempt subsequent resale purchases or rentals made by the same purchaser. A selling dealer must obtain a new transaction resale authorization number for each and every resale transaction.

4. The selling dealer must document the transaction resale authorization number on the sales invoice, purchase order, or a separate form that is prepared by either the purchaser or the selling dealer. The sales invoice, purchase order, or separate form must contain the following statement: "The purchaser hereby certifies that the property or services being purchased or rented are for resale." This statement must be followed by the signature of the purchaser. The signature may be obtained by the selling dealer through use of an electronic signature pad or other electronic method.

5. Alternatively, in lieu of meeting the requirements of subparagraph 4., the transaction resale authorization number may be documented on a properly completed Uniform Sales and Use Tax Certificate-Multijurisdiction, as provided in subsection (8) of this rule.

(c) **VENDOR RESELL AUTHORIZATION NUMBER FOR REGULAR CUSTOMERS WHO HAVE PREVIOUSLY SUBMITTED DOCUMENTATION TO THE SELLING DEALER – VALID FOR CALENDAR YEAR ISSUED.** In lieu of obtaining a Transaction Authorization Number or a copy of the purchaser's valid Annual Resale Certificate for each tax-exempt sale made for the purposes of resale, the selling dealer may obtain a Vendor Resale Authorization Number from the Department. This option is available to selling dealers throughout the calendar year without limitation. The selling dealer must maintain a copy of the purchaser's Annual Resale Certificate, whether valid or outdated.

1. The "Vendor Resale Authorization Number" is a customer-specific authorization

number that will be valid for all sales for resale made to a particular customer during the calendar year.

2. To obtain vendor resale authorization numbers, the selling dealer may use the Department's on-line Certificate Verification System at <http://www.myflorida.com/dor/gta.html> or send a written request to the Department.

a. The written request may be forwarded to the Department or may be submitted on Form DR-600013, Request for Verification that Customers are Authorized to Purchase for Resale, or by providing the following information: date of request; name of the dealer's business; return address; name and telephone number of a contact person. The written request, or completed Form DR-600013, should be forwarded to: Florida Department of Revenue, Production Management, 5040 West Tharpe Street, Suite 202, Tallahassee, Florida 32303-7836, along with a list of the dealer's regular customers for which the dealer has a valid Annual Resale Certificate on file or an outdated Annual Resale Certificate on file. The electronic format for sending the customer data is provided in Form DR-600013 and may be obtained from the Department's web site at www.myflorida.com/dor or by calling the Department at (850) 488-3516. In response to this request, the Department will issue to the selling dealer, using the same electronic medium, a list containing a unique vendor resale authorization number for each customer who is an active registered dealer.

b. The Department's on-line Certificate Verification System allows the user to verify up to five purchasers' sales tax certificate of registration numbers and to obtain a transaction authorization number for single sales made to each purchaser at once. The system also allows the user to upload a batch file of up to 50,000 accounts for verification of an Annual Resale Certificate number and, 24 hours later, retrieve the file containing the vendor authorization numbers for sales made for the purposes of resale to each purchaser during the calendar year.

3. The selling dealer may make exempt sales for resale to a customer during the period in which the vendor resale authorization number for that customer is valid. Vendor resale authorization numbers are valid for the remainder of the calendar year during which they are issued. However, vendor resale authorization numbers issued by the Department in November or December shall be valid for the remainder of the current calendar year and the next calendar year.

(4) SALES OF ALCOHOLIC BEVERAGES AND CERTAIN MOTOR VEHICLES; SALES TO OUT-OF-STATE DEALERS.

(a) The sale of alcoholic beverages by distributors licensed by the Division of Alcoholic Beverage and Tobacco, Department of Business and Professional Regulation, to others who are also licensed by the Division of Alcoholic Beverage and Tobacco, Department of Business and Professional Regulation, are deemed to be sales for resale. The distributors are not required to meet the documentation requirements provided in subsection (3) of this rule.

(b) The sale of motor vehicles or recreational vehicles through a motor vehicle

auction licensed by the Department of Highway Safety and Motor Vehicles, pursuant to Section 320.27(1)(c)4., F.S., to other motor vehicle dealers licensed by the Department of Highway Safety and Motor Vehicles under Section 320.27(2), F.S., are deemed to be sales for resale. The motor vehicle auction is not required to meet the documentation requirements provided in subsection (3) of this rule.

(c) Guidelines for sales of tangible personal property, except aircraft, boats, mobile homes, motor vehicles, and other vehicles to nonresident dealers who are not required to be registered in this state for resale outside Florida are provided in Rule 12A-1.0015, F.A.C.

(d) For sales of aircraft, boats, mobile homes, motor vehicles, and other vehicles, blanket resale affidavits from out-of-state motor vehicle dealers are acceptable in lieu of individual affidavits required under subsection 12A-1.007(6), F.A.C., for each sale of each motor vehicle to such out-of-state motor vehicle dealers.

(5) BURDEN OF ESTABLISHING EXEMPT NATURE OF SALES FOR RESALE.

(a) A selling dealer who makes a sale for resale in good faith, and who complies with the requirements of subsections (3) and (4) of this rule, has met the burden of proof for establishing the exempt nature of the sale, and is relieved from any liability for tax due on that sale. Submission of copies of Annual Resale Certificates to the Department that are obtained after the sale from purchasers who were active registered dealers at the time of the sale will be considered sufficient compliance with subsection (3) when submitted during audit or protest, but will not be acceptable if submitted during any proceeding under Chapter 120, F.S., or in any circuit court action under Chapter 72, F.S.

(b)1. A sale that is not in compliance with the requirements of subsections (3) and (4) of this rule is presumed to be a retail sale, and the selling dealer will be liable for any applicable sales tax not collected and remitted on that sale.

2. For a sale that is not in compliance with the requirements of subsections (3) and (4), but that is made to a person who was an active registered dealer at the time of the sale, and it would be reasonable to assume, based on the nature of the purchaser's business, that the sale was for the purposes of resale, the presumption that the sale is a retail sale can be overcome during an audit or protest.

3. A sale made to a person who was not an active registered dealer, other than a nonresident dealer, at the time of the transaction is a retail sale, and can never be considered a sale for resale. However, a selling dealer who accepts an Annual Resale Certificate that appears valid on its face will not be held liable for any tax due on this transaction, if it is later determined that the purchaser was not an active registered dealer at the time of the transaction.

(6) RECORDS REQUIRED. Resale certificates created and issued by purchasers that were based on the Department's suggested format provided in Rule 12A-1.039, F.A.C., effective 12-13-94, are valid only for the purpose of documenting sales for resale made prior to February 1, 2000. The selling dealer must also maintain copies of receipts,

invoices, billing statements, or other tangible evidence of sales, copies of Annual Resale Certificates and other certificates, and Vendor Resale Authorization and Transaction Authorization Numbers until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under Section 95.091(3), F.S. Electronic storage by the selling dealer of the copy of the Annual Resale Certificate or other required documentation through use of imaging, microfiche, or other electronic storage media will be sufficient compliance with the provisions of this subsection.

(7) PROVISIONS APPLICABLE TO PERSONS WHO CLAIM THE RESALE EXEMPTION.

(a) Annual Resale Certificates may only be used by purchasers who hold a valid Sales and Use Tax Certificate of Registration (Form DR-11) issued by the Department, and whose registration status is currently active. For dealers who have been in business for less than the full calendar year, the effective date of the Annual Resale Certificate (Form DR-13) will be the postmark or hand delivered date of the Sales and Use Tax Application for Certificate of Registration. The effective date is found in the block labeled "Registration Effective Date" on the Sales and Use Tax Certificate of Registration (Form DR-11).

(b) A dealer whose Sales and Use Tax Certificate of Registration has been revoked or whose registration status has been inactivated or canceled by the Department is prohibited from purchasing, leasing, or renting taxable property or services for the purposes of resale exempt from tax. However, a selling dealer who accepts an Annual Resale Certificate that appears valid on its face will not be held liable for tax on this transaction, if it is later determined that the purchaser was not an active registered dealer at the time of the transaction.

(c) A purchaser who files returns on a consolidated basis (80 code) may extend, and the selling dealer may accept, a copy of the Annual Resale Certificate bearing the purchaser's consolidated sales tax registration number (80 code number), in lieu of extending a copy of the Annual Resale Certificate for each active location that is reported under the consolidated sales tax registration number (80 code number).

(d) For dealers who report sales tax using a county-control number, the Annual Resale Certificate will only be issued to the active reporting number(s) within each county. Dealers who report using a county-control number must use the Annual Resale Certificate issued to the active reporting number(s) to make purchases for resale, except dealers who file returns under a consolidated sales and use tax registration number (80 code). Sales tax numbers issued to the individual locations within a county are inactive, and will not be issued an Annual Resale Certificate.

(e) Wholesalers and certain other sales tax dealers who are currently on an inactive reporting status will need to contact the Department at (800) 352-3671 to have their sales tax registration number activated in order to obtain the Annual Resale Certificate and make exempt purchases for resale. By activating the sales tax registration number, the dealer will then be required to file a sales tax return during each applicable reporting period, as provided in Section 212.11(1), F.S.

(f) Purchasers who are holders of a Direct Pay Permit, Temporary Tax Exemption Permit, or other permits or exemption certificates issued pursuant to Chapter 212, F.S., are not required to extend or provide copies of their Annual Resale Certificate to the selling dealer to make tax exempt purchases authorized under the Direct Pay Permit, Temporary Tax Exemption Permit, or other exemption certificates or permits issued pursuant to Chapter 212, F.S.

(g) A person who complied with the provisions of this rule when making a purchase or rental of tangible personal property that is intended for resale, but then uses, consumes, distributes, or stores for use or consumption in this state, the tangible personal property in a manner inconsistent with the purposes described in paragraph (1)(b) of this rule, is required to pay use tax as provided in Section 212.05(1)(b), F.S.

(h) Any person who, for the purpose of evading tax, uses an Annual Resale Certificate or signs a written statement claiming an exemption from sales tax knowing that tax is due on the property or services at the time of purchase or rental, is subject to the civil and criminal penalties provided in Section 212.085, F.S.

(i) The resale exemption shall also apply to the importation of tangible personal property into this state for resale in this state. A dealer who imports tangible personal property into this state for resale must be an active registered dealer at the time the property is imported into this state to meet the resale exemption requirements. The determination whether a particular item of tangible personal property imported into this state is for resale is based on the same criteria described in paragraph (1)(b) of this rule.

(8) USE OF UNIFORM SALES AND USE TAX CERTIFICATE – MULTIJURISDICTION. The Department will allow purchasers to use the Multistate Tax Commission’s Uniform Sales and Use Tax Certificate-Multijurisdiction. However, the use of this uniform certificate must be in conjunction with the telephonic or electronic authorization number method described in paragraph (3)(b) or (c) of this rule.

Rulemaking Authority 212.07(1)(b), 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 95.091(3), 212.02(14), 212.05(1)(b), (i), 212.07(1), 212.085, 212.13(5)(c), (d), 212.17(6), 212.18(2), (3), 218.186, 212.21(2), 213.053(10), 218.186 FS. History—Revised 10-7-68, 1-7-70, 6-16-72, 9-26-77, Amended 7-20-82, 4-12-84, Formerly 12A-1.39, Amended 1-2-89, 9-14-93, 12-13-94, 10-2-01, 6-12-03, 11-6-07, 9-1-09.

Therefore, the exemption only applies when a distributor sells exclusively alcoholic beverages to a licensed vendor. The exemption does not apply when a distributor sells both alcoholic and non-alcoholic beverages to a licensed vendor.

Conclusion: Florida Department of Revenue Rule 12A-1.039 (4), Sales for Resale, provides an exemption for obtaining and maintaining resale certificates for distributors licensed by DABT selling exclusively alcoholic beverages to vendors licensed by DABT. On its face the exemption does not apply when a distributor sells non-alcoholic beverages to licensed vendors.