

minutes of school staff time. If school staff time is valued at \$50 per hour, the estimated cost is approximately \$25 per school, times 3 schools, equals \$75 aggregate statewide cost to the schools per year. There is no application fee for the schools to apply for course approval. The 3 schools have reviewed the draft rule and offered no objections to same.

2) In paragraph 69K-100.035(5)(a), F.A.C., the reference to form “DFS-N1-” is replaced by “DFS-N1-2041.”

## Section IV Emergency Rules

### DEPARTMENT OF REVENUE

#### Corporate, Estate and Intangible Tax

RULE NO.:	RULE TITLE:
12CER12-1	Adjustments for Excess Section 179 Expense and Special Bonus Depreciation

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:** Chapter 2011-229, Laws of Florida, authorizes the Department of Revenue to promulgate an emergency rule, and to renew such rule, to implement the provisions of the law. The law provides that conditions necessary for an emergency rule and its renewal have been met. Chapter 2011-229, Laws of Florida, retroactively makes changes related to bonus depreciation and section 179 expense of the Internal Revenue Code (I.R.C.). As a result of these changes, contained in Section 220.13(1)(e), F.S., taxpayers may need to file amended returns. This emergency rule establishes procedures for reporting the additions and claiming the subtractions required by Section 220.13(1)(e), F.S., and provides procedures for filing amended Florida corporate income tax return(s).

**REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:** The Legislature expressly authorized the promulgation of an emergency rule, and the renewal of such rule, to implement Chapter 2011-229, Laws of Florida, and determined that all conditions necessary for this emergency rule have been met. The law is retroactive, and as a result, some taxpayers need to amend their Florida corporate income tax return(s) if a return(s) affected by these changes was previously filed. This emergency rule establishes procedures for reporting additions and claiming the subtractions required by Section 220.13(1)(e), F.S., so that taxpayers may timely file the required amended returns.

**SUMMARY:** Emergency Rule 12CER12-01, (Adjustments for Excess Section 179 Expense and Special Bonus Depreciation), provides procedures for taxpayers subject to the adjustments contained in Section 220.13(1)(e), F.S., for I.R.C. section 179 expense in excess of: \$250,000 (for tax years beginning in 2010) and \$128,000 (for tax years beginning in 2011) and bonus depreciation under I.R.C. sections 167 and 168(k). This

emergency rule: (1) provides the additions that taxpayers are required to add back to the amount of the federal deduction claimed under I.R.C. sections 167 and 168(k) for bonus depreciation and under I.R.C. section 179 that exceeds: \$250,000 (for tax years beginning in 2010) and \$128,000 (for tax years beginning in 2011); (2) provides the subtractions that are available in each of seven tax years beginning with the year an addition is made under Section 220.13(1)(e), F.S.; (3) requires taxpayers to maintain a schedule reflecting all adjustments made under Section 220.13(1)(e), F.S.; (4) provides that these adjustments do not affect the basis of the property; and (5) provides when the subtractions under Section 220.13(1)(e), F.S., and when the deductions allowed under I.R.C. section 179 are not required to be included in a taxpayer’s Florida corporate income tax return.

**THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:** Robert DuCasse, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-6476

**THE FULL TEXT OF THE EMERGENCY RULE IS:**

12CER12-1 Adjustments for Excess Section 179 Expense and Special Bonus Depreciation.

(1) Scope. This rule only applies to taxpayers subject to the adjustments contained in Section 220.13(1)(e), F.S., for IRC section 179 expense in excess of \$250,000 (for tax years beginning in 2010) and \$128,000 (for tax years beginning in 2011) and bonus depreciation under IRC sections 167 and 168(k).

(2) Additions Required:

(a)1. For tax years that begin in 2010, taxpayers are required to add back the amount of the federal deduction claimed under section 179 of the Internal Revenue Code (“IRC”) that exceeds \$250,000. All amounts in excess of \$250,000 are required to be added back, including amounts carried over from previous tax years under IRC section 179(b)(3)(B). The increased overall investment limitation contained in IRC section 179(b)(2) is the same for Florida as it is for federal income tax purposes.

2. For tax years that begin in 2011 and 2012, taxpayers are required to add back the amount of the federal deduction claimed under section 179 of the Internal Revenue Code (“IRC”) that exceeds \$128,000. All amounts in excess of \$128,000 are required to be added back, including amounts carried over from previous tax years under IRC section 179(b)(3)(B). The increased overall investment limitation contained in IRC section 179(b)(2) is the same for Florida as it is for federal income tax purposes.

(b) Taxpayers are required to add back the amount of the federal deduction claimed as bonus depreciation under IRC sections 167 and 168(k) for assets placed in service after December 31, 2009, and before January 1, 2013.

(3) Subtractions Allowed:

(a) In each of the seven tax years commencing with the year the addition is made under Section 220.13(1)(e), F.S., taxpayers may subtract one-seventh of the amount of excess IRC section 179 expense and one-seventh of the amount of bonus depreciation that is added back under Section 220.13(1)(e), F.S.

(b) The total amount that may be subtracted over the seven-year period should equal, but may not exceed, the amounts of IRC section 179 expense and bonus depreciation that have been added back to Florida taxable income under Section 220.13(1)(e), F.S.

(c) Subtractions may be transferred to the surviving company in a merger or acquisition. Otherwise, if a taxpayer ceases to do business during the seven-year period, it may not accelerate, transfer or otherwise utilize a subtraction.

(4) A schedule reflecting all of the adjustments made under Section 220.13(1)(e), F.S., must be created and maintained. Taxpayers must also report any additions on Schedule I, Additions and/or Adjustments to Federal Taxable Income, of the Florida Corporate Income/Franchise and Emergency Tax Return (Form F-1120, incorporated by reference in Rule 12C-1.051, F.A.C.) and any subtractions on Schedule II, Subtractions from Federal Taxable Income, of the return for the applicable tax year. Partnerships filing a Florida Partnership Information Return (Form F-1065, incorporated by reference in Rule 12C-1.051, F.A.C.) are required to make the adjustments required by Section 220.13(1)(e), F.S., on Part I of Form F-1065.

(5) Basis of Property: The adjustments required by Section 220.13(1)(e)1. and 2., F.S., (relating to excess IRC section 179 expense and bonus depreciation), do not affect the basis of the underlying property. The basis of the property for Florida corporate income tax purposes is the same as the basis of the property for federal income tax purposes. If the property is sold or otherwise disposed of, the gain or loss for Florida corporate income tax purposes is the same as the gain or loss for federal income tax purposes and is included in federal taxable income apportioned to Florida. Differences in the apportionment fraction from one year to the next are disregarded. The applicable depreciation conventions, methods, and recovery periods are computed in the same manner as they are computed in determining federal taxable income.

(6) Amended Returns and Section 220.13(1)(e), F.S. Taxpayers that filed their Florida corporate income tax returns in a manner inconsistent with these changes in law are required to amend their Florida corporate income tax return(s) to conform to the new law. To the extent that any tax is due and paid on an amended return(s) as a result of these changes in law for the differences between the additions and subtractions required by Section 220.13(1)(e), F.S., and the adjustments required by Section 220.13(1)(e), F.S., reasonable cause exists under rule 12-13.007, F.A.C., for a waiver of the resulting

penalty. The provisions of this rule do not relieve a taxpayer of its obligation to file a Florida corporate income tax return and report the adjustments required by Section 220.13(1)(e), F.S.

(7) The subtractions allowed by Section 220.13(1)(e), F.S., are the means by which the additions required by Section 220.13(1)(e), F.S., are reconciled and recovered. If a taxpayer does not claim a deduction for bonus depreciation or a deduction for IRC section 179 expense in excess of \$250,000 (for tax years beginning in 2010) and \$128,000 (for tax years beginning in 2011), no add-back is required or subtraction allowed for Florida corporate income tax purposes. Similarly, if a taxpayer did not add back bonus depreciation or excess section 179 expense because, for example, it was not subject to the Florida corporate income tax in that year, no subtraction is allowed for Florida corporate income tax purposes.

(8) Bonus depreciation claimed for assets placed in service after December 31, 2012, is not required to be added back under Section 220.13(1)(e), F.S. IRC section 179 expense claimed in tax years beginning after December 31, 2012, is not required to be added back. No subtraction is allowed for bonus depreciation or IRC section 179 expense unless it has been added back in computing Florida taxable income under Section 220.13(1)(e), F.S.

Rulemaking Authority s. 4, Ch. 2011-229, L.O.F. Law Implemented Ch. 2011-229, L.O.F. History—New 1-20-12.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: January 20, 2012

**DEPARTMENT OF THE LOTTERY**

RULE NO.: 53ER12-10  
RULE TITLE: Retailer Application and Fee Schedule

SUMMARY: This emergency rule sets forth the provisions regarding the application(s) to be filed and related fees for persons desiring to contract with the Lottery as a retailer. This emergency rule replaces Emergency Rule 53ER05-9, F.A.C.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Diane D. Schmidt, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER12-10 Retailer Application and Fee Schedule.

(1) New Applicants.

(a) Any person interested in contracting with the Lottery as a retailer shall file Form DOL-129, Retailer Application; or Form DOL-129-1, Retailer Application in Spanish; or Form DOL-129C, Chain Account Retailer Application, as applicable.

(b) For the initial sales location, each applicant shall submit a fee of \$100.00 along with the appropriate retailer application set forth in paragraph (a), above.

(c) An application for an additional location must be submitted to the Lottery on Form DOL-129, DOL-129-1, DOL-129C, or Form DOL-129CA, Chain Account Retailer Additional Location Application, as applicable, and must be accompanied by a fee of \$25.00 for each additional location.

(d) Each applicant shall be subject to a background investigation, which can include fingerprinting.

(e) Organizations which are publicly traded on a national securities exchange must submit the following:

1. Form DOL-129C, including Section 4 entitled "Information on Publicly Traded Organizations"; and

2. Form DOL-374, Affidavit. Form DOL-374 will be provided to the applicant during the application process and must be completed by a corporate officer or legal counsel to state whether the corporation, any of its executive officers or its chairperson has been convicted of, or entered a plea of guilty or nolo contendere to, a felony committed in the preceding ten years, regardless of adjudication.

(f) Organizations which are not publicly traded on a national securities exchange shall be subject to the background investigation provisions set forth in accordance with rules of the Florida Lottery governing retailer applicant background investigations. A copy of the current rule can be obtained from the Florida Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011.

(2) Renewal Application.

Retailer contracts shall be renewed by execution of a new retailer contract. Prior to the expiration of a retailer contract, a retailer shall submit Form DOL-307, Application for Contract Renewal, or Form DOL-320, Application for Chain Account Contract Renewal, and a new retailer contract signed by the retailer, along with a fee of \$10.00 per location and \$25.00 for each new officer, director, or shareholder of 10% or more of the corporation since the last application. Renewal applicants shall be subject to a background investigation and fingerprinting may be required.

(3) Change of Location.

An application to change a location must be submitted to the Lottery at least thirty days in advance of the change, on Form DOL-129, DOL-129-1, or DOL-129C, as applicable, and must be accompanied by a fee of \$10.00.

(4) All application fees shall be non-refundable unless the initial application is denied because the applicant or the location fails the Lottery's marketing evaluation, in which case the application fee for that location shall be refunded to the applicant.

(5) Applications and subsequent contracts, if any, are not assignable or transferable to any person or entity.

(6) Any department, commission, agency, or instrument of the state, or its subdivisions, or any municipality or county, that seeks a contract as a retailer shall bear the burden of securing approval of any other person, board, commission, agent, or instrumentality of the state, or its subdivisions, or municipality or county, which may have controlling authority over the applicant.

(7) The following forms are incorporated herein by reference and may be obtained by writing to the Department of the Lottery, Retailer Contracting, 250 Marriott Drive, Tallahassee, Florida 32399-4011:

Form DOL-129, Retailer Application, revised 06/09.

Form DOL-129-1, Retailer Application in Spanish, revised 06/08.

Form DOL-129C, Chain Account Retailer Application, revised 06/08.

Form DOL-129CA, Chain Account Retailer Additional Location Application, revised 06/07.

Form DOL-374, Affidavit, revised 06/08.

Form DOL-307, Application for Contract Renewal, revised 10/10, and

Form DOL-320, Application for Chain Account Contract Renewal, revised 10/10.

Forms DOL-129, DOL-129-1, DOL-129C, and DOL-129CA may also be obtained from the Lottery's website at [www.flalottery.com](http://www.flalottery.com).

(8) This emergency rule replaces Emergency Rule 53ER05-9, F.A.C.

Rulemaking Authority 24.109(1), 24.112(1) FS. Law Implemented 24.112 FS. History—New 1-23-12, Replaces 53ER05-9.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: January 23, 2012

**DEPARTMENT OF THE LOTTERY**

RULE NO.: 53ER12-11                      RULE TITLE: Payment of Prizes by Retailers

SUMMARY: This emergency rule sets forth the provisions for payment of prizes by retailers and replaces Emergency Rule 53ER05-20, F.A.C.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Diane D. Schmidt, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER12-11 Payment of Prizes by Retailers.

(1) A retailer shall pay all winning lottery tickets valued at less than \$600 that are validated through the retailer's terminal.

(2) A retailer shall ensure that sufficient funds are available by cash, check, or money order before validating any ticket to pay a prize.

(3) A player who submits a ticket valued at less than \$600 to the Florida Lottery for payment that has been validated by a retailer will be instructed to return to the same retailer to receive payment. In such case, the Lottery will return the validated ticket to the player.

(4) A retailer shall pay any winning ticket of \$50 or less in cash unless:

(a) It is impossible or impracticable to do so due to a company or store policy that for safety or security reasons, limits the amount of cash available to the clerk; or

(b) It is impossible or impracticable to do so due to an applicable local government ordinance that limits the amount of cash available to the clerk.

In such event, the retailer shall pay as much in cash as is possible and the remainder by check or money order.

(5) A retailer shall pay any winning ticket exceeding \$50 but less than \$600 by cash, check, or money order.

(6) If a retailer validates a ticket valued at \$600 or more, the retailer shall provide the player with the original ticket, the continuation ticket, if one was issued, and the player claim instructions ticket produced by the retailer terminal. The retailer shall instruct the claimant to submit a claim to the Florida Lottery for prizes of \$600 or more or when any dispute arises regarding the amount or validity of an apparent winning ticket or when an apparent winning ticket will not validate using the terminal.

(7) A retailer shall be held responsible for and will not receive credit for any prize paid for a ticket that was not a winner or that was recorded in the gaming system as paid by another retailer.

(8) A retailer shall not pay any winning ticket of \$600 or more. A retailer who violates this subsection and fails to furnish to the Lottery the complete name, address and tax identification number of the player to whom payment was made so that the Lottery can file a Form W-2G, shall be charged backup withholding pursuant to Internal Revenue Service (IRS) regulations, as well as a non-refundable \$50 service charge to offset any penalties and interest imposed by the IRS. If the IRS imposes penalties and interest in excess of \$50, the retailer's account will be adjusted in the amount of any excess. The Lottery is authorized to reimburse the retailer only upon receipt of documentation establishing that the ticket was paid in full and a determination that no fraud or other violation has been committed.

(9) A retailer shall not charge players a fee for the service of redeeming winning lottery tickets. This prohibition includes charging a fee for payment of a prize by money order when that is the only method of prize payment made available by the retailer.

(10) If a retailer violates any provision of this rule, the retailer shall be subject to suspension or termination in accordance with rules of the Florida Lottery governing suspension and termination of retailer contracts. A copy of the current rule can be obtained from the Florida Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011.

(11) This emergency rule replaces Emergency Rule 53ER05-20, F.A.C.

Rulemaking Authority 24.105(9)(e), 24.109(1), 24.112(1), 24.115(1) FS. Law Implemented 24.112(1), 24.115 FS. History—New 1-23-12, Replaces 53ER05-20.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: January 23, 2012

#### DEPARTMENT OF THE LOTTERY

RULE NO.: 53ER12-12                      RULE TITLE: Promotional Event Drawings

SUMMARY: This emergency rule sets forth the provisions for promotional drawings that involve the purchase of a lottery ticket or tickets in exchange for entry into the promotional drawings. This emergency rule replaces Emergency Rule 53ER00-43.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Diane D. Schmidt, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32301

THE FULL TEXT OF THE EMERGENCY RULE IS:

#### 53ER12-12 Promotional Event Drawings.

(1) This rule sets forth the provisions for promotional drawings that involve the purchase of a lottery ticket or tickets in exchange for entry into the promotional drawings.

(2) The following information, if applicable, shall be made readily available to the participants at the time and location of entry into the promotional drawing:

- (a) Date and time of the drawing;
- (b) Price and method of entry into the drawing;
- (c) Deadline for entry into the drawing;
- (d) Number and description of prizes to be awarded;
- (e) Any drawing restrictions (e.g. must be present to win);
- (f) Drawing procedures;
- (g) Determination of prize winners;
- (h) Method of claiming prizes;
- (i) Prize delivery provisions.

(3) A person designated by the Lottery shall conduct promotional drawings.

(4) Odds of winning a prize are dependent upon the number of entries received.

(5) All promotional drawing participants must be at least 18 years of age.

(6) Persons prohibited by Section 24.116, F.S., from purchasing a Florida lottery ticket are not eligible to win a promotional prize.

(7) Entry into any promotional drawing constitutes permission for the Florida Lottery to photograph and/or videotape and record the prize winner with or without prior notification and to use the name, photograph, videotape, and/or recording of the prize winner for advertising or publicity purposes without additional compensation.

(8) All entries and prizes are subject to the provisions of Chapter 24, F.S., and rules promulgated thereunder. Entry into a promotional drawing constitutes agreement to abide by the official rules of the promotion.

(9) If the value of the promotional prize equals \$600 or more, the value will be reported to the Internal Revenue Service as income. Payment of any federal income tax and any additional federal, state and/or local taxes is the responsibility of the winner.

(10) This emergency rule replaces Emergency Rule 53ER00-43, F.A.C.

Rulemaking Authority 24.109(1), 24.105(9)(j) FS. Law Implemented 24.105(9) FS. History—New 1-23-12. Replaces 53ER00-43.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: January 23, 2012

## Section V Petitions and Dispositions Regarding Rule Variance or Waiver

### DEPARTMENT OF LAW ENFORCEMENT

NOTICE IS HEREBY GIVEN that on January 17, 2012, the Criminal Justice Standards and Training Commission, received a petition for a permanent waiver of subsection 11B-27.00212(14), F.A.C., from Center Hill Police Department on behalf of one officer for the 2008 (7/1/2006 – 6/30/2008) and 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting cycles. Subsection 11B-27.00212(14), F.A.C., requires officers to requalify with a firearm every two years on a course of fire mandated by Commission rule and supervised by a CJSTC-certified firearms instructor. The petition supports the requested waiver by stating that the officer at issue completed the course of fire for the 2008 and 2010 reporting cycles, however, he was a CJSTC-certified firearms instructor and he signed his own CJSTC 86A form. Petitioner states that the officer will suffer a substantial hardship if his certification is rendered inactive as a result of this situation. Petitioner further states that it would

violate the principles of fairness to fail to recognize that the officer did successfully complete the requirement, his only deficiency being that as a CJSTC-certified firearms instructor, he signed his own CJSTC 86A form for the 2008 and 2010 mandatory firearms requalification reporting cycle.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Grace A. Jaye, Assistant General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302 or by telephoning (850)410-7676.

NOTICE IS HEREBY GIVEN that on January 20, 2012, the Criminal Justice Standards and Training Commission, received a petition for a permanent waiver of subsection 11B-27.00212(14), F.A.C., from the Office of the State Attorney, Fifteenth Judicial Circuit, on behalf of one officer for the 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting periods. Subsection 11B-27.00212(14), F.A.C., requires officers to requalify with a firearm every two years on a course of fire mandated by Commission rule and supervised by a CJSTC-certified firearms instructor. The petition supports the requested waiver by stating that the officer at issue was hired straight from the academy on January 22, 2009. Petitioner erroneously believed that the officer's firearms training course at the academy was the same as mandatory firearms requalification. Petitioner affirms that the officer was successfully requalified for the 2012 mandatory firearms requalification reporting cycle by a CJSTC-certified firearms instructor. Petitioner states that the officer will suffer a substantial hardship if his certification is rendered inactive as a result of this situation. Petitioner further states that it would violate the principles of fairness to fail to recognize that the officer was a new hire in 2009 and that he did, in fact, shoot the mandatory firearms requalification course of fire for the 2012 reporting cycle.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Grace A. Jaye, Assistant General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302 or by telephoning (850)410-7676.

NOTICE IS HEREBY GIVEN that on January 18, 2012, the Criminal Justice Standards and Training Commission, received a petition for a permanent waiver of subsection 11B-27.00212(14), F.A.C., from Sea Ranch Lakes Police Department on behalf of 19 officers for the 2008 (7/1/2006 – 6/30/2008) and 2010 (7/1/2008 – 6/30/2010) mandatory firearms requalification reporting periods. Subsection 11B-27.00212(14), F.A.C., requires officers to requalify with a firearm every two years on a course of fire mandated by Commission rule and supervised by a CJSTC-certified firearms instructor. The petition supports the requested waiver by stating that the officers at issue did complete the physical aspects of the rule, however, the CJSTC 86A forms for the officers are not in the officers' files. Petitioner states that the