



Sales and Use Tax on Commercial Real Property Rentals

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Definitions

Real Property - The surface land, its improvements, and fixtures.

Rental Payment - Payment made by the tenant for the right to use or occupy commercial real property. This may include charges for ad valorem taxes (whether paid to the landlord or directly to the county tax collector's office), common area maintenance, customer (free) parking, or janitorial service.

What is Taxable?

The total amount of rent paid for the right to use or occupy commercial real property is subject to sales tax and applicable discretionary sales surtax, unless the rent is specifically exempt. If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the landlord, those payments are included in the total amount of rent paid and are subject to sales tax and surtax. The

\$5,000 limitation of surtax for tangible personal property does not apply to the lease, rental, or license to use commercial real property. Payments for separately stated services that are required under the lease or license are part of the total amount of rent paid.

Examples of commercial real property rentals:

- Office or retail space
- Warehouses
- Convention and meeting rooms
- Mini-warehouses

Rentals, leases, and licenses to use or occupy commercial real property by related persons, as defined in section (s.) 212.02(12), Florida Statutes (F.S.), are also subject to sales tax and surtax. For example, the lease of commercial real property by a parent corporation to one of its subsidiaries, or by a shareholder to a corporation, is subject to sales tax and surtax.

What is Exempt?

The following rentals are exempt from sales tax:

- Rentals of commercial real property assessed as agricultural.
- Commercial rentals to nonprofit organizations that hold a current Florida *Consumer's Certificate of Exemption* (Form DR-14).
- Rentals to federal, state, county, or city government agencies.

For a complete list of exemptions, see s. 212.031, F.S. See "Reference Material" for information on obtaining tax laws.

Who Must Register to Collect Tax?

Any person who rents, leases, or grants a license to others to use commercial real property must register with the Department. Any real estate brokerage firm that rents or leases commercial real property or receives rental payments on behalf of the property owner or lessor of the property must register with the Department.

You can register to collect and report tax through our website at www.myflorida.com/dor. The site will guide you through an application interview that will help you determine your tax obligations. If

you do not have Internet access, you can complete a paper *Florida Business Tax Application* (Form DR-1). You must complete a separate application for each commercial real property location.

After we approve your registration, you will receive a *Certificate of Registration* (Form DR-11) and a *Florida Annual Resale Certificate for Sales Tax* (Form DR-13). If you are not filing electronically, we will mail paper tax returns to you. The *Florida Annual Resale Certificate for Sales Tax* is used to lease or rent commercial real property tax-exempt when the property will be subleased to others. If you retain the property for your own use, you must report and pay use tax and surtax on the leased or rented commercial real property. Florida law provides for criminal and civil penalties for fraudulent use of a *Florida Annual Resale Certificate for Sales Tax*.

Subleases

If you lease commercial real property that is subject to sales tax and then sublease a portion of it to another person, you must collect sales tax and surtax on the rental payments you receive. You may take a credit on a pro-rated basis for the sales tax and surtax you paid to your landlord on the subleased portion.

Example: You lease 200 square feet of floor space for \$400 plus \$24 in sales tax on the lease amount.

\$400.00 original lease amount
x 6% sales tax rate (property is located in a county without a surtax)
\$ 24.00 sales tax you paid to your landlord

You sublease half of your space (100 square feet) to another person for \$300 plus \$18 sales tax.

\$300.00 sublease amount
x 6% sales tax rate
\$ 18.00 sales tax you collect

You must pay to the Department only the amount of sales tax that exceeds what you paid on the subleased portion. To calculate this, look at the tax you paid to your landlord for the entire space (\$24). Half of that (for half the space) is \$12. The tax you collected (\$18) exceeds the amount you paid on the subleased portion (\$12) by \$6. You pay \$6 sales tax to the Department.

If you sublease or assign your interest in all of the leased property, or retain an insignificant portion of the commercial real property, and you are registered with the Department, you may provide your *Florida Annual Resale Certificate for Sales Tax* to your landlord to lease or rent the property tax-exempt and collect sales tax and surtax on the subleased property. You must also pay sales tax and surtax to the Department on the portion of the property that you used.

Tenant Liability

If you cannot prove that sales tax and surtax has been paid to your landlord, you are directly liable to the Department for any unpaid sales tax, interest, or penalty due.

When is Tax Due?

Returns and payments are due the first day of the month and late after the 20th of the month following each reporting period, whether you are filing monthly, quarterly, twice a year, or yearly. If the 20th falls on a Saturday, Sunday, or state or federal holiday, returns and payments will be timely if they are postmarked on the first business day after the 20th. **Florida law requires you to file a tax return even if you do not owe sales and use tax.**

Electronic Filing and Payment

We offer the use of our free and secure website to file and pay sales tax. You also have the option of buying software from a software vendor. For more information on electronic filing and payment

options, visit our website. You may voluntarily file and pay taxes electronically; however, if you pay \$20,000 or more in sales and use tax between July 1 and June 30 (the state fiscal year), you must use electronic funds transfer (EFT) for the next calendar year to pay your taxes.

If you make tax payments using electronic funds transfer (EFT), you must initiate electronic payments no later than 5:00 p.m., ET, on the business day before the 20th.

Penalty and Interest

Penalty – If you file your return or pay tax late, a late penalty of 10 percent of the amount of tax owed, but not less than \$50, may be charged. The \$50 minimum penalty applies even if no tax is due. Penalty will also be charged if your return is incomplete.

Interest – A floating rate of interest applies to underpayments and late payments of tax. Current and prior period interest rates are posted on our website.

Reference Material

Tax Laws - Our online Revenue Law Library contains statutes, rules, legislative changes, opinions, court cases, and publications. Search the library for s. 212.031, F.S., Tax on Rental or License Fee for Use of Real Property; and Rule 12A-1.070, Florida Administrative Code, Leases and Licenses of Real Property, Storage of Boats and Aircraft.

Brochures - Download these brochures from our “Forms and Publications” page:

- *Florida’s Sales and Use Tax* (GT-800013)
- *Florida’s Discretionary Sales Surtax* (GT-800019)
- *Florida Annual Resale Certificate for Sales Tax* (GT-800060)
- *Sales and Use Tax on Rental of Living or Sleeping Accommodations* (GT-800034)
- *Sales and Use Tax on Tangible Personal Property Rentals* (GT-800038)
- *Sales and Use Tax on Amusement Machines* (GT-800020)
- *Sales and Use Tax on Vending Machines* (GT-800041)

Information, forms, and tutorials are available on our website:

www.floridarevenue.com

To speak with a Department representative, call Taxpayer Services at 800-352-3671, Monday through Friday, excluding holidays.

To find a **taxpayer service center** near you, go to:

www.floridarevenue.com/taxes/Pages/servicecenters.aspx

For written replies to tax questions, write to:

Taxpayer Services – MS 3-2000
Florida Department of Revenue
5050 W Tennessee St
Tallahassee FL 32399-0112

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