AGENDA
RULE DEVELOPMENT WORKSHOP
(If Requested in Writing)
Workshop Material Available on the web at:
http://www.floridarevenue.com/rules

10:00 A.M., September 19, 2017

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ROOM 1220, BLDG ONE
2450 SHUMARD OAK BLVD
TALLAHASSEE, FLORIDA

THIS MEETING IS OPEN TO THE PUBLIC

1. **Call to Order:**

   (a) Introduction of Department of Revenue Staff
   (b) Opening Remarks by Department of Revenue

2. **Business: Presentation and discussion of the proposed changes to the following rule sections of the Florida Administrative Code (F.A.C.):**

   SALES AND USE TAX
   Rule 12A-1.070, F.A.C.

3. **Closing Comments**

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

AMENDING RULE 12A-1.070

12A-1.070 Leases and Licenses of Real Property; Storage of Boats and Aircraft.

(1)(a)1. through 6. d. No change.

~~e. From July 1, 1990, through June 30, 1991, property used at an airport to operate advertising displays in any county as defined in Section 125.011(1), F.S., was exempt from tax.~~

(1)(a)7. No change.

8. ~~Effective July 1, 1987,~~ Pproperty leased, subleased, or rented to a person providing food and drink concessionaire services within the premises of a movie theater, a business operated under a permit issued pursuant to Chapter 550, F.S. (dog and horse racing), or any publicly owned arena, sports stadium, convention hall, exhibition hall, auditorium, or recreational facility; however, licenses to use ~~for~~ such spaces are subject to sales tax ~~have been taxable since July 1, 1986, and remain taxable~~.

(1)(a)9. through (b)1. No change

(1)(b)2. ~~However, effective July 1, 1987, a~~ A person providing retail concessionaire services involving the sale of food and drink or other tangible personal property within the premises of an airport shall not be subject to the tax on any license to use such property. For purposes of this subparagraph, the term "sale" shall not include the leasing of tangible personal property.

(1)(b)3. No change.

(1)(c) ~~Effective July 1, 1987,~~ Rreal property used as an integral part of the performance of

qualified production services shall not be subject to tax. The term "qualified production services" means any activity or service performed directly in connection with the production of a qualified motion picture. The term "qualified motion picture" means all or any part of a series of related images, either on film, tape, or other embodiment, including, but not limited to, all items comprising part of the original work and film-related products derived therefrom, as well as duplicates and prints thereof, and all sound recordings created to accompany a motion picture, which is produced, adapted, or altered for exploitation in, on, or through any medium or device and at any location, primarily for entertainment, commercial, industrial, or educational purposes and includes:

(1)(c)1. through 5. No Change

~~(d) The provisions of this rule relating to the license to use, occupy, or enter upon any real property are effective July 1, 1986, unless otherwise noted.~~

(1)(e) through (1)(f) renumbered (1)(d) through (1)(e)

(2) through (4)(a) No change.

(4)(b) The tax shall be paid at the rate of 5.8. ~~5~~ percent ~~prior to February 1, 1988, and 6 percent on or after February 1, 1988,~~ on all considerations due and payable by the tenant or other person actually occupying, using, or entitled to use any real property to his landlord or other person for the privilege of use, occupancy, or the right to use or occupy any real property for any purpose. The amount of tax due must be calculated with the use of the applicable effective sales tax brackets (Form DR-2 LLRP, Florida Sales Tax Brackets Effective on all Leases and Licenses of Real Property Transactions Taxable Under Section 212.031(1)(c), Florida Statutes, incorporated by reference in Rule 12A-1.097, F.A.C.)

(4)(c) and (d) No change.

(e) Utility charges paid by a tenant to the lessor for the privilege or right to use or occupy real property are taxable, unless the lessor has paid the sales tax to the utility company on such utilities consumed by the tenant, and the utilities billed by the lessor to the tenant are separately stated on the lessor's invoice to the tenant at the same or lower price as that billed by the utility company to the lessor.

1. Example: Landlord owns a building with 5 offices and common areas. All offices are the same size. Landlord uses one office and leases the other four. The lease agreement provides that the utility charges are "additional rent" and failure to pay such utility charges when required will cause the lease to terminate. All offices use approximately the same amount of utilities. Utility services are sold by City Utilities to Landlord. City Utilities' service bill to Landlord is as follows:

Electrical energy	$1000.00
Gas energy	500.00
Gross Receipts Tax ($1500 x 2.5%)	37.50
Subtotal – subject to sales tax	1537.00
Sewage & garbage service	100.00
Water service	50.00
Florida sales tax	92.50
Municipal utilities tax ($1500 x 10%)	150.00
Total Amount Due	$1929.75

Landlord charges each tenant $2,000 rent, which includes the tenant's use of the common areas, in addition to the tenant's pro rata share of utilities, including sales tax on utilities, gross receipts tax on utilities and municipal utility tax based on Landlord's cost. Of the above total

charges that add up to $1,929.75, the charges for services of sewage, garbage, and water service are not utility service charges on which tax was paid by Landlord. Consequently, only the portion of each tenant's $385.95 share of the total charge billed by City Utilities ($1,929.75) which represents the tenant's share of non-taxable charges is taxable as rent. Therefore, the invoice to the tenant for the month should read:

Rent	$2,000.00
Tenant's one-fith share of charges for sewage, garbage, & water	30.00
Total subect to tax	$2,030.00
Florida (5.8%) ~~(6%)~~ sales tax	117.74 ~~121.80~~
Reimbursement for one-fifth share of utilities on which tax was paid by Landlord	355.95
Total Amount Due	$2,503.69 ~~2,507.75~~

2. Example: Same facts as above, except Landlord marks up the total of City Utilities' service bill by 10 percent, resulting in a total charged to the tenants for utilities of $2,122.73, instead of the $1,929.75 actually paid by Landlord for the utilities. Thus each tenant's one-fifth share of utilities would be $424.55, instead of $385.95. Again, if Landlord separately states the utility charges on the tenant's invoice, Landlord should compute the tax as follows:

Rent	$2,000.00
Tenant's share of utlities not taxed (total utilites $424.55, less utilities on which Landlord paid tax $355.95)	68.60
Total subject to tax	$2,068.60
Florida (5.8%) ~~(6%)~~ sales tax	119.94 ~~124.12~~
Reimbursement for one-fifth share of utilities on which tax was paid by lessor	355.95
Total Amount Due	$2,544.49 ~~2,548.67~~

However, where a landlord marks up the utilities, in addition to the sales tax being due, gross receipts tax, at the rate of 2.5 percent, would also be due on the marked-up portion, pursuant to Section 203.01, F.S.

(4)(f) through (7) No change.

(8) When a tenant (lessee) or other person occupying, using, or entitled to use any real property (licensee) sublets or assigns some portion of the leased or licensed property, he may take credit on a pro rata basis for the tax that he paid to his landlord or other such person on the space that he subleases or assigns. Proration shall be computed on square footage or some other basis acceptable to the Executive Director or the Executive Director's designee in the responsible program. For example, Tenant leases 200 square feet of floor space for $400 and pays Landlord $23.20 ~~24~~ rental tax. Tenant subleases 100 square feet, or one half, of the space to Subtenant for $300 and collects $ 17.40 ~~18~~ tax which he remits to the State, less a credit of $11.60 ~~12~~ for tax that he paid to his landlord on the space that he subleased to Subtenant. (One half of $400 is $200 and 5.8 ~~6~~ percent of this amount is $11.60 ~~12~~.)

(9) No change.

(10) When the owner of a business, or the operator of a business who is a lessee or licensee, provides floor space to any person, and in addition thereto and in connection therewith also provides certain services to such person such as display, delivery, wrapping, packaging, telephone, credit, collection, or accounting, the amount charged by the lessee or licensee to such person constitutes the lease or rental of or license to use or occupy real property and where the charges for such services are not separately stated in the agreement and on the invoices or other billings, the total consideration paid under the agreement is taxable. ~~Prior to July 1, 1987, and on or after January 1, 1988,~~ W~~w~~here the charges for such services are separately stated in the

agreement and on the invoices or other billings, only those charges for floor space are taxable. When the operator of a business is a lessee or licensee, he may take credit in accordance with the provisions of subsection (8) of this rule, for the tax paid on the floor space which he subleases or assigns.

(11) through (16) No change.

(17)(~~a) Prior to July 1, 1987, when a lessee or licensee was required under the terms of his lease or license fee arrangement to make payments to a merchants' association or to the lessor or other person receiving the rent or payment, by the rental or license fee arrangement, to be transmitted without deduction therefrom to a merchants' association, such payments were not rent and were exempt. "Merchants' association" means a corporation not for profit organized and existing for the sole and exclusive purpose of promoting the businesses of a group of merchants.~~

~~(b) Effective July 1, 1987, such~~ Ppayments to a merchants' association by a lessee or licensee shall be taxable if the payments are a part of the consideration for the right to use or occupy the real property. If the payments are not part of the consideration for the right to use or occupy the real property, such payments are not taxable.

(18) through (22) No change.

(23) The applicable tax rate for rental payments made by a tenant is based on the date that the tenant occupies or is entitled to occupy the property. The applicable tax rate may not be avoided by delaying or prepaying rent or license fee payments.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(10)(h), (i), (13), 212.03(6), 212.031 FS. History–New 10-7-68, Amended 2-8-69, 10-7-69, 6-16-72, 9-26-77, 10-18-78, 12-31-81, 7-20-82, Formerly 12A-1.70, Amended 1-2-89, 3-27-95, 7-17-95, _____.