

Notice of Change/Withdrawal

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.: RULE TITLE:

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

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 43 No. 202, October 18, 2017 issue of the Florida Administrative Register.

The following changes are made in response to written comments received from the staff of the Joint Administrative Procedures Committee.

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

(1)(a) Every person who rents or leases any real property or who grants a license to use, occupy, or enter upon any real property is exercising a taxable privilege unless such real property is:

1. through 9. No change

10. Classified as a type of property for which another exemption may apply pursuant to section 212.031, F.S.

(b) through (e) No change

(2) through (3) No change

(4)(a) through (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	1537.50
Sewage and garbage service	100.00
Water service	50.00
Florida sales tax	92.50
Municipal utilities tax (\$1500 x 10%)	<u>150.00</u>
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	\$2000.00
Tenant's one-fifth share of charges for sewage, garbage, & water	30.00
Total subject to tax	\$2030.00
Florida (5.8%) sales tax	117.74

Reimbursement for one-fifth share of utilities on which tax was paid by Landlord

355.95 ~~55.95~~

Total Amount Due

\$2503.69

2. No change

(f) No change

(g)1. No change

2. Notwithstanding the provisions of subparagraph 1. above, if the amount paid by a lessee to a lessor to cancel or terminate a lease agreement is recorded as a rental expense in the lessee's books and records, then such payment is subject to tax. However, if the lessee does not record that payment as a rental expense, then such payment is not considered a payment for the lease of the real property but as a payment to cancel or terminate the agreement, and is not subject to tax. If the lessee records the payment as a rental expense but does not remit tax to the lessor on such payment, then the lessee is required to remit the tax on such charge directly to the Department of Revenue. The lessee is required to remit the tax on Form DR-15, Sales and Use Tax Return, if a registered dealer, or if unregistered, the lessee is required to remit the tax on Form DR-15MO, Out-of-State Purchase Return. Forms DR-15 and DR-15MO are incorporated by reference in Rule 12A-1.097, F.A.C.

3. through 4. No change

(5) through (23) No change.