

AGENDA
RULE DEVELOPMENT HEARING
(If Requested in Writing)

Hearing Material Available on the web at:
floridarevenue.com/rules/

10:00 A.M., November 8, 2017

Contacts: **Brinton Hevey, Revenue Program Administrator I, (850) 717-7082**
 Becky Avrett, Government Analyst I, (850) 717-6799

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.

DISCRETIONARY SALES SURTAX
Rule 12A-15.014, F.A.C.

3. Closing Comments

STATE OF FLORIDA
DEPARTMENT OF REVENUE
SALES AND USE TAX
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
AMENDING RULE 12A-1.070

SUMMARY OF PROPOSED RULE

The proposed amendment implements statutory changes made by Chapter 2017-36, L.O.F., to the sales tax rate for certain leases of real property and to make technical changes to remove obsolete information.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendment implements statutory changes made by Chapter 2017-36, L.O.F., to the sales tax rate for certain leases of real property and to make technical changes to remove obsolete information.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

SEPTEMBER 19, 2017

A Notice of Proposed Rule Development was published in the Florida Administrative Register on September 5, 2017 (Vol. 43, No. 172, p. 3836), to advise the public of the proposed change to Rule 12A-1.070, F.A.C., and to provide that, if requested in writing, a rule development workshop would be held on September 19, 2017. On September 5, 2017 the Department received a request to hold a workshop for rule 12A-1.070, F.A.C. The request was withdrawn on September 13, 2017, after the individual reviewed proposed language posted on the Department's website. No additional requests for a workshop were received, and no workshop was held. Additional comments were received from another party, requesting language be added to the rule. After review, no changes were made to proposed text in response to those comments.

Written comments were received by the Department regarding proposed changes to Rule 12A-1.070, F.A.C., from a taxpayer requesting that language be added to the rule in order to clarify that new lease agreements are not required in order for the reduced tax rate to apply to rental payments received after January 2018. The Department declined to make changes to the proposed rule based on the comments received.

SUMMARY OF PUBLIC HEARING

OCTOBER 17, 2017

The Governor and Cabinet, sitting as head of the Department of Revenue, met on October 17, 2017, and approved the publication of the Notice of Proposed Rule for changes to Rule 12A-1.070, F.A.C. A notice for the public hearing was published in the Florida Administrative Register on October 10, 2017 (Vol. 43, No. 196, p. 4369).

Notice of Proposed Rule

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

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.070, F.A.C., is to implement statutory changes made by Chapter 2017-36, L.O.F., to the sales tax rate for certain leases of real property and to make technical changes to remove obsolete information.

SUMMARY: The proposed amendments incorporate the reduction of sales tax rate for certain leases and licenses to use real property.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: 1) no requirement for the Statement of Economic Regulatory Costs (SERC) was triggered under Section 120.541(1), F.S.; and 2) based on past experiences regarding rules of this nature, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

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.

LAW IMPLEMENTED: 212.02(10)(h), (i), (13), 212.03(6), 212.031 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: November 8, 2017, 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 days before the workshop/meeting by contacting: Becky Avrett at (850)717-6799. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Brinton Hevey, (850)717-7082

THE FULL TEXT OF THE PROPOSED RULE IS:

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 5.

6. a. through 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.~~

7. No change.

8. ~~Effective July 1, 1987, P~~property 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.~~

9. No change.

(b)1. No change

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.

3. No change.

(c) ~~Effective July 1, 1987, R~~real 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. 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.~~

(e) through(f) redesignated(d) through (e) No change.

(2) through (3) No change.

(4)(a) No change.

(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.)

(c) 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 | | 1537.00 |
| Sewage & 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 | \$2,000.00 |
| Tenant's one-fifth share of charges for sewage, garbage, & water | 30.00 |
| Total subject to tax | \$2,030.00 |
| Florida (5.8%) (6%) sales tax | <u>117.74</u> 121.80 |
| Reimbursement for one-fifth share of utilities on which tax was paid by Landlord | <u>55.95</u> |
| Total Amount Due | <u>\$2,503.69</u> 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 utilities not taxed (total utilities \$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 | <u>119.94</u> 124.12 |
| Reimbursement for one-fifth share of utilities on which tax was paid by lessor | <u>355.95</u> |
| Total Amount Due | <u>\$2,544.49</u> 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.

(f) through (g)

(5) 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~~where 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 P~~payments 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, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Brinton Hevey

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 17, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 5, 2017

STATE OF FLORIDA
DEPARTMENT OF REVENUE
SALES AND USE TAX
CHAPTER 12A-15, FLORIDA ADMINISTRATIVE CODE
DISCRETIONARY SALES SURTAX
AMENDING RULE 12A-15.014

SUMMARY OF PROPOSED RULE

The proposed amendments incorporate the reduction of the sales tax rate for certain leases and licenses to use real property provided by section 21 of Chapter 2017-36 L.O.F., and bring sales tax rate for electricity into compliance with current law.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendments incorporate the reduction of the sales tax rate for certain leases and licenses to use real property provided by section 21 of Chapter 2017-36 L.O.F., and bring the sales tax rate for electricity into compliance with current law.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

SEPTEMBER 19, 2017

A Notice of Proposed Rule Development was published in the Florida Administrative Register on September 5, 2017 (Vol. 43, No. 172, p. 3837), to advise the public of the proposed changes to Rule 12A-15.014, F.A.C., and to provide that, if requested in writing, a rule development workshop would be held on September 19, 2017. On September 5, 2017, the Department received a request to hold a workshop for rule 12A-15.014. The request was withdrawn on September 13, 2017, after the individual reviewed proposed language posted on the Department's website. No additional requests were received, and no workshop was held. No additional comments were received.

SUMMARY OF PUBLIC HEARING

OCTOBER 17, 2017

The Governor and Cabinet, sitting as head of the Department of Revenue, met on October 17, 2017, and approved the publication of the Notice of Proposed Rule for changes to Rule 12A-15.014, F.A.C. A notice for the public hearing was published in the Florida Administrative Register on October 10, 2017 (Vol. 43, No. 196, p. 4370).

Notice of Proposed Rule

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.: RULE TITLE:

12A-15.014 Transition Rule

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-15.014, F.A.C., is to implement statutory changes made by Chapter 2017-36 L.O.F., and to bring the sales tax rate for electricity into compliance with current law.

SUMMARY: The proposed amendments incorporate the reduction of the sales tax rate for certain leases and licenses to use real property provided by section 21 of Chapter 2017-36 L.O.F., and bring the sales tax rate for electricity into compliance with current law.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: 1) no requirement for the Statement of Economic Regulatory Costs (SERC) was triggered under Section 120.541(1), F.S.; and 2) based on past experiences regarding rules of this nature, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.05(1), 212.054, 212.055, 212.06(10) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: November 8, 2017, 10:00 a.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida

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THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Brinton Hevey at (850)717-7082

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-15.014 Transition Rule.

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

(2) Commercial Rentals. Prepayments of rents to avoid increased tax rate are prohibited. Tenants with leases in effect prior to the effective date of any such surtax which provide for payments to be made on and after the effective date of any such surtax, cannot avoid tax by prepaying rent prior to the effective date of the surtax. Commercial rentals will be taxed at 5.8 % ~~6%~~ plus the surtax rate for all rentals due on or after the effective date of any such surtax.

(3) Electric Utilities; Natural or Manufactured Gas; Fuel Oil.

(a) Electric utilities and sellers of gas and fuel oil normally bill their customers after the period of service. The 6.95% ~~7%~~ tax rate plus the surtax rate will apply to billing cycles, which includes services billed for cycles ending on or after the effective date of any such surtax.

1. through 2. No change.

(b) No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.05(1), 212.054, 212.055, 212.06(10) FS.
History—New 12-11-89, Amended 11-16-93, 3-20-96, 10-2-01, 4-17-03,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Brinton Hevey

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 17, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: September 5, 2017