



5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

**QUESTION:** What percentage of Taxpayer's rent payments are subject to Florida Sales and Use Tax?

**ANSWER:** It is the Department's position that the taxable percentage of [REDACTED] percent is a reasonable determination and therefore the portion of the rental consideration paid by lessee which is subject to sales tax.

December 01, 2023

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Via Email: [REDACTED]

Subject: Technical Assistance Advisement - 23A-022  
Sales and Use Tax – Taxable Portion of Hotel Lease  
STATUTE CITE(S): Sections 212.03 and 212.031, Florida Statutes (F.S.)  
RULE CITE: Rule 12A-1.070, Florida Administrative Code (F.A.C.)  
[REDACTED] ("Taxpayer")  
FEIN: [REDACTED]  
BP#: [REDACTED]

Dear [REDACTED]:

This is in response to your letter dated [REDACTED] requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the matter referenced below. An examination of your letter has established that Taxpayer has complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

### Requested Advisement

What percentage of Taxpayer's rent payments are subject to Florida Sales and Use Tax?

### Facts

Taxpayer and [REDACTED] ("Lessee") entered into a master lease for the renovation and operation of [REDACTED] ("Hotel") in [REDACTED]. The parcel includes a

[REDACTED] ("SF") with [REDACTED]. In addition, the building as [REDACTED] SF of [REDACTED] of which [REDACTED] by guests of Hotel and the public. [REDACTED].

The following is the detailed breakdown of square footage provided by Taxpayer and its suggested taxability:

[REDACTED]

[REDACTED]	[REDACTED] SF	Exempt
[REDACTED]	[REDACTED] SF	Exempt
[REDACTED]	[REDACTED] SF	Taxable
Total	[REDACTED] SF	

[REDACTED]

[REDACTED]	[REDACTED] SF	Exempt
[REDACTED]	[REDACTED] SF	Exempt
[REDACTED]	[REDACTED] SF	Exempt
[REDACTED]	[REDACTED] SF	Exempt
[REDACTED]	[REDACTED] SF	Taxable
Total	[REDACTED] SF	

[REDACTED]

[REDACTED]	[REDACTED] SF	Exempt
[REDACTED]	[REDACTED] SF	Exempt
[REDACTED]	[REDACTED] SF	Taxable
Total	[REDACTED] SF	

[REDACTED]

[REDACTED]	[REDACTED] SF	Exempt
[REDACTED]	[REDACTED] SF	Taxable
Total	[REDACTED] SF	

[REDACTED]

[REDACTED]	[REDACTED] SF	Exempt
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<sup>1</sup> Taxpayer's Power of Attorney confirmed in an email dated [REDACTED], that there was an error in the square footage assigned to "[REDACTED]". The square footage should be [REDACTED], not [REDACTED]. This revision does not change the Grand Total square footage.

██████████	██████ SF	Exempt
Total	██████ SF	
████████████████████	██████ SF	Exempt
Grand Total	██████ SF	

**Taxpayer's Position**

Under the facts involved, Taxpayer believes that ██████% is a reasonable method useful for calculating the taxable portion of lease payments under a lease for multiple use property. The ██████% was calculated by dividing the grand total SF (██████████) by the taxable SF used by Taxpayer (██████████).

The numerator in Taxpayer's calculation is comprised of the SF (██████████) that is used exclusively by Taxpayer for its maintenance and operation of Hotel. The numerator does not include the ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, ██████████, ██████████ (which guest have access to), ██████████ (which is "████████████████████"), and other areas which are provided for use to Hotel guests without any additional charge, which are considered part of the dwelling units and therefore exempt pursuant to s. 212.031(a), F.S. The numerator furthermore does not include the ██████████ which is taxed under s. 212.03(6), F.S. The denominator in Taxpayer's calculation is the grand total SF (██████████) of the land.

**Applicable Authority and Discussion**

Section 212.03, F.S., provides the following in part:

(1)(a) It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license to use any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel . . .

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(6) The Legislative finds that every person who leases or rents parking or storage spaces for motor vehicles in parking lots or garages . . . is engaging in a taxable privilege.

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Section 212.031, F.S., provides in part:

(1)(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless such property is:

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2. Used exclusively as dwelling units.
3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6), F.S.

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(b) When a lease involves multiple use of real property wherein a part of the real property is subject to the tax herein, and a part of the property would be excluded from the tax under . . . subparagraph (a)2., subparagraph (a)3., . . . , the department shall determine, from the lease or license and such other information as may be available, that portion of the total rental charge which is exempt from the tax imposed by this section . . . .

(c) For the exercise of such privilege, a tax is levied in an amount equal to 4.5 percent of and on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee. The total rent or license fee charged for such real property shall include payments for the granting of a privilege to use or occupy real property for any purpose and shall include base rent, percentage rents, or similar charges. . . . In the case of a contractual arrangement that provides for both payments taxable as total rent or license fee and payments not subject to tax, the tax shall be based on a reasonable allocation of such payments and shall not apply to that portion which is for the nontaxable payments.

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(2)(b) It is the further intent of this Legislature that only one tax be collected on the rental or license fee payable for the occupancy or use of any such property, that the tax so collected shall not be pyramided by a progression of transactions, and that the amount of the tax due the state shall not be decreased by any such progression of transactions.

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Section 212.031(1)(a), F.S., imposes sales tax on the privilege of engaging in the leasing of, or the granting of a license to use, real property. Section 212.031(1)(c), F.S., imposes the tax on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee. However, s. 212.031(1)(a)2., F.S., excludes real property from the tax when such property is “used exclusively as dwelling units.” Section 212.031(1)(a)3., F.S., excludes real property from the tax when such property is “subject to tax on parking, docking, or storage spaces” under s. 212.03(6),

F.S. The law further provides that sales tax under s. 212.031, F.S., shall not be pyramided by a progression of transactions.

Section 212.031(1)(b), F.S., authorizes the Department to determine the taxable portion of the total rent payment when, in a lease of real property, there are multiple uses of such property, and a portion of the property is subject to the tax, while another portion is not subject to tax, because of the applicability of an exemption or exclusion, such as those in s. 212.031(1)(a)2., and 3., F.S. The Department's interpretation of this statute is provided in Rule 12A-1.070(14)(a), F.A.C., and provides that the Department shall determine from the lease or license agreement, or other pertinent information available, that portion of the rental charge that is exempt from tax.

The Department has not verified the SF of the figures that were provided. Based on the figures provided, the Department disagrees with Taxpayer's proposed taxable percentage of [REDACTED] percent. In particular, the Department opines that the [REDACTED], which is [REDACTED] square feet, should be included as "taxable" space and not exempt space. Therefore, the numerator would be [REDACTED] square feet and the denominator would be [REDACTED] square feet, which results in a taxable percentage of [REDACTED] percent.

#### **Conclusion**

It is the Department's position that the taxable percentage of [REDACTED] percent is a reasonable determination and therefore the portion of the rental consideration paid by Lessee which is subject to sales tax.

This response constitutes a TAA under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for TAA, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the Taxpayer. Your response should be received by the Department within ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-6363.

Sincerely,

*Leigh L. Ceci*

Leigh L. Ceci, MAcc  
Tax Law Specialist  
Technical Assistance & Dispute Resolution  
(850)717-6363

CC: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Record ID: 7001037543

### TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7001037543

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at [douglas.charity@floridarevenue.com](mailto:douglas.charity@floridarevenue.com).

Thank you.