

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) 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. Landlord’s total utility bill is \$1,900. Of that total, \$150 was non-taxable water, garbage, and sewage charges. Landlord charges each tenant \$2,000 rent and 1/5 of Landlord’s total utility bill with no mark-up. Tenant owes tax on the rent and on his portion of the utility charges not taxed to Landlord. Therefore, the invoice to the tenant for the month should read:

Rent	\$2,000.00
Tenant’s one-fifth share of charges not taxed to Landlord (\$150 * 20%)	30.00
Total subject to sales tax	\$2,030.00
Florida (<u>4.5%</u> 5.5%) sales tax	<u>91.35</u> 111.65
Reimbursement for one-fifth share of utilities on which tax was paid by Landlord (\$1,900 - \$150 * 20%)	<u>350.00</u>
Total Amount Due	<u>\$2,471.35</u>

	\$2,491.65
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2. Example: Same facts as above, except Landlord marks up Tenants' share of the total of City Utilities' service bill by 10 percent. Thus, each tenant's one-fifth share of utilities would be \$418.00, instead of \$380.00. 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 one-fifth share of charges not taxed (total utilities \$418, less utilities on which Landlord paid tax, \$350.00)	68.00
Total subject to sales tax	\$2,068.00
Florida (4.5% <u>5.5%</u>) sales tax	<u>93.06</u> 113.74
Reimbursement for one-fifth share of utilities on which tax was paid by Landlord	<u>350.00</u>
Total Amount Due	<u>\$2,511.06</u> \$2,531.74

(f) through (g) No change.

(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 \$400.00 and pays Landlord ~~\$18.00~~ \$22.00 rental tax. Tenant subleases 100 square feet, or one half, of the space to Subtenant for \$300.00 and collects ~~\$13.50~~ \$16.50 tax which he remits to the State, less a credit of ~~\$9.00~~ \$11.00 for tax that he paid to his landlord on the space that he subleased to Subtenant. (One half of \$400.00 is \$200.00 and ~~4.5~~ 5.5 percent of this amount is ~~\$9.00~~ \$11.00.)

(9) through (23) No change.

PROPOSED EFFECTIVE DATE: December 1, 2023

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 212.03(6), 212.031 FS., 22, Ch. 2023-157, LOF.

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, 1-17-18, 1-8-19, 12-12-19, 6-14-22,_____.