

(a) How to Claim the Refund. An application that includes

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DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.: 12A-1.070
RULE TITLE: 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 incorporate the reduction of the tax rate from 5.5 percent to 4.5 percent, effective December 1, 2023, on the rental, lease, or license to use, occupy, or enter upon any real property as provided in s. 22, Ch. 2023-157, L.O.F.

SUMMARY: The proposed amendment to Rule 12A-1.070, F.A.C. (Leases and Licenses of Real Property; Storage of Boats and Aircraft), updates the state sales tax rate from 5.5% to 4.5%, effective December 1, 2023, on the rental, lease, or license to use, occupy, or enter upon any 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: 212.18(2), 213.06(1) FS.  
LAW IMPLEMENTED: 212.03(6), 212.031 FS., s. 22, Ch. 2023-157, L.O.F.

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: October 12, 2023, 9:00 a.m.  
PLACE: 2450 Shumard Oak Boulevard, Building One, Room 1221, Tallahassee, Florida 32399. If a meeting is requested in writing, members of the public can also attend electronically via webinar; participants will need to register for the webinar using the following link: <https://attendee.gotowebinar.com/register/265558880189094743>

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 hours before the workshop/meeting by contacting: Tonya Fulford 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, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7754, email RuleComments@floridarevenue.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

**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 (4.5% <del>5.5%</del> ) sales tax	<u>91.35</u> <del>111.65</del>
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> <del>\$2,491.65</del>

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% <del>5.5%</del> ) sales tax	<u>93.06</u> <del>113.74</del>
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> <del>\$2,531.74</del>

- (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, \_\_\_\_\_.

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: September 18, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT

PUBLISHED IN FAR: June 30, 2023

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