



Sales and Use Tax on Commercial Real Property Rentals

Definitions

Real Property - The surface land, improvements thereto, and fixtures; also called "realty" and "real estate."

Rental Payment - Payment made by the tenant for the right to use or occupy real property. This may include charges for ad valorem taxes (whether paid to the landlord or directly to the county tax collector's office), common area maintenance, customer (free) parking, or janitorial service.

What is Taxable?

Sales Tax

Sales tax is due at the rate of 6 percent on **the total** rent paid for the right to use or occupy commercial real property, unless the rent is specifically exempt. If the tenant makes payments such as mortgage, ad valorem taxes or insurance on behalf of the landlord, those payments are also classified as rent and are subject to tax. **Payments for separately stated services that are required under the lease or license are part of the taxable total rent paid.**

Here are examples of commercial real property rentals that are subject to sales tax:

- Office or retail space
- Warehouses
- Convention and meeting rooms
- Mini-warehouses

Rentals, leases, and licenses to use or occupy real property by related "persons" as defined in section 212.02(12), Florida Statutes (F.S.), are also subject to sales tax. Examples include, but are not limited to, a parent corporation to subsidiaries and individual/shareholder to a corporation.

Discretionary Sales Surtax

Rental payments subject to sales tax are also subject to any locally imposed discretionary sales surtax. The surtax rate is determined by the county in which the real property is located. Only the first \$5,000 on a single sale of tangible personal property is subject to discretionary surtax. **This limitation does not apply to taxable rentals of commercial real properties; the entire rental payment is subject to discretionary sales surtax.** More information can be found in the *Discretionary Sales Surtax* brochure (Form GT-800019) and on the list of surtax counties and rates (Form DR-15DSS). You can find these and other publications on our web site at www.myflorida.com/dor.

What is Exempt?

The following rentals are exempt from sales tax:

- Rentals of real property assessed as agricultural.
- Commercial rentals to nonprofit organizations that hold a current Florida Consumer's Certificate of Exemption (Form DR-14).
- Rentals to federal, state, county, or city government agencies.

For a complete list of exemptions, see section 212.031, F.S., and Rule 12A-1.070, Florida Administrative Code (F.A.C.). See "Reference Material" for information on obtaining tax laws.

Who Should Register to Collect Tax?

If you lease or grant a license to use commercial real property, you are required to register as a dealer and collect sales tax. You can register online; go to the Department's Internet site and click on e-Services. The site will guide you through an application interview that will help you determine your tax obligations. If you do not have Internet access, you can complete a paper *Application to Collect and/or Report Tax in Florida* (Form DR-1). You can obtain Form DR-1 from your local DOR service center or one of the contacts listed below.

Every real estate brokerage firm that rents or leases real property or receives rental payments on behalf of a property owner or lessor is engaged in a taxable activity. Such persons are required to register with the Department to collect and remit sales tax on rental receipts. Agents who are registering multiple properties for management should complete a separate Form DR-1 for each location.

About Subleases

If you lease real property that is subject to sales tax and then sublease a portion of it to another person, you must collect sales tax on the rent you receive. You can take credit on a pro-rated basis for tax you paid to your landlord on the subleased portion. See the following example.

Example:

You lease 200 square feet of floor space for \$400 plus \$24 in sales tax on the lease amount.

\$400.00 original lease amount
X 6% sales tax (property is located in a county without a surtax)
\$ 24.00 sales tax you paid to your landlord

You sublease half of your space (100 square feet) to another person for \$300 plus \$18 sales tax.

\$300.00 sublease amount
X 6% sales tax (property is located in a county without a surtax)
\$ 18.00 sales tax you collect

You must remit to the state only the amount of sales tax that exceeds what you paid on the subleased portion. To calculate this, look at the tax you paid to your landlord for the entire space (\$24). Half of that (for half the space) is \$12. The tax you collected (\$18) exceeds the amount you paid on the subleased portion (\$12) by \$6. You remit \$6 sales tax to the state.

If you sublet or assign your interest in all of the leased premises, or retain only an insignificant portion of the real property, you may choose not to pay sales tax to your landlord as long as you register as a dealer and collect and remit sales tax due on the subleased space. You would then owe "use tax" on that portion of the property you retain for your own use. In this case, you must present a signed copy of your *Annual Resale Certificate* to your landlord.

Tenant Liability

If you cannot prove that sales tax has been paid to your landlord, you are directly liable to the Department for any unpaid sales tax, interest, or penalty due.

Reference Material

Tax Laws - Our online Tax Law Library contains statutes, rules, legislative changes, opinions, court cases, and publications. Search the law library for s. 212.031, F.S., *Tax on rental or license fee for use of real property*; and Rule 12A-1.070, F.A.C., *Leases and Licenses of Real Property, Storage of Boats and Aircraft*.

Brochures - Download these brochures from our “Forms and Publications” page:

- *Florida's Sales and Use Tax*
- *Discretionary Sales Surtax*
- *Rental of Living or Sleeping Accommodations*
- *Tangible Personal Property Rentals*
- *Amusement Machines*
- *Vending Machines*

For Information and Forms

Information and forms are available on our Internet site at: www.myflorida.com/dor

To speak with a Department of Revenue representative, call Taxpayer Services, Monday through Friday, 8 a.m. to 7 p.m., ET, at 800-352-3671.

Persons with hearing or speech impairments may call our TDD at 800-367-8331 or 850-922-1115.

For a written reply to tax questions, write:

Taxpayer Services
Florida Department of Revenue
5050 W Tennessee St Bldg L
Tallahassee FL 32399-0112

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Sign up to get e-mail notices automatically when we post:

- Tax Information Publications (TIPs).
- Facts on Tax, a quarterly publication.
- Proposed rules, notices of rule development workshops, and more.

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