

## **DON'T BE A VICTIM: FLORIDA SALES TAX ON COMMERCIAL RENT**

By: Jerry Donnini

The State of Florida is unique in many ways. From our immaculate beaches, to Disney World, to our tropical weather and our ability to play golf all winter long, Florida is one of the best places to live in the United States. However, Florida is also somewhat unique in that it is one of three states in the country that imposes sales tax on commercial rent. Virtually all out-of-state companies and many professionals, including tax professionals, are unaware of this rule.

While many gas station operators do correctly pay sales tax to their landlords, the problematic situation arises when a business owns its own gas station or office building. Often times, for liability purposes, a business will set up two legal entities, an operating entity and a real estate holding entity. Even if the ownership is the same, sales tax is due on any rental payments made from the operating entity to the real estate holding company.

Even more surprising to the unsuspecting business owner, is that if no rent is paid, there can be sales tax implications. This is because the Department of Revenue takes the position that any payments made directly by the operating entity on behalf of the holding entity are deemed rent. Classic examples of deemed rental payments are payments made for the mortgage, insurance, and real estate taxes by the operating entity.

You can only imagine the reactions our firm gets and the look on business owner's faces when they are assessed a significant tax liability for rent they didn't even know was taxable or deemed rental payments that they did not even think about as being rent. Luckily, with a little tax planning, the sales tax on intercompany rent can be significantly reduced if not avoided altogether. Over the last 6 months we have seen and successfully defended dozens of commercial rent notices sent to real estate companies from the Florida Department of Revenue.

As part of a family that has been in the petroleum business for over 35 years, I thought I would make everyone aware of this law that is somewhat unique to Florida. On the flip side, we also often encounter businesses that pay tax to a landlord and collect tax from its tenant. If you incorrectly are double paying tax in this manner we encourage you to go back and get a refund!

About the author: Mr. Donnini is a Florida Attorney and an associate in the law firm Moffa, Gainor, & Sutton, PA, in Fort Lauderdale, Florida. Mr. Donnini's primary practice is Florida tax controversy. Mr. Donnini's family has been in the petroleum industry in South Florida for over 35 years. Jerry is also currently pursuing his LL.M. in Taxation at NYU. If you have any questions please do not hesitate to contact me via email at [JerryDonnini@FloridaSalesTax.com](mailto:JerryDonnini@FloridaSalesTax.com) or at 954-642-9390.