



# Sales and Use Tax On Commercial Real Property Rentals

## Leasing or subleasing commercial real property

### Definitions

**Real property** – The surface land, improvements to land, and fixtures; also called “realty” and “real estate.”

**Rental payment** – All payments made by the tenant for the right to use or occupy real property are subject to tax. 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 six percent on all rent paid for the right to use or occupy commercial real property, unless the rent is exempt. If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the landlord, those payments are classified as rent and are subject to tax.

Here are examples of commercial real property rentals that are subject to sales tax and the applicable discretionary sales surtax:

- Office or retail space
- Warehouses
- Convention and meeting rooms
- Mini-warehouses
- The granting of space for vending or amusement machines

Rentals, leases, and licenses to use or occupy real property by related “persons” as defined in section 212.02(12), Florida Statutes, are also subject to sales tax. Examples include, but are not limited to: parent corporation to subsidiaries, individual/shareholder to a corporation, and when a landlord/tenant relationship is exhibited and any consideration is exchanged for the right of occupancy.

#### Discretionary Sales Surtax

Most Florida counties have a discretionary sales surtax on transactions subject to sales and use tax. Only the first \$5,000 on a single sale of tangible personal property is subject to discretionary sales surtax. **This limitation does not apply to taxable rentals of commercial properties; the entire rental payment is subject to discretionary sales surtax.** You can get a *Discretionary Sales Surtax* brochure (Form GT-800019) and a list of surtax counties and rates (Form DR-15DSS) from our Internet site at [www.myflorida.com/dor](http://www.myflorida.com/dor).

### What is Exempt?

These rentals of real property 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.
- Rentals as transient rental property

For a complete list of exemptions, read s. 212.031, F.S., and Rule 12A-1.070, Florida Administrative Code. See “Reference Material.”

## Who Should Register to Collect Tax?

If you rent, lease, or grant a license to use commercial real property, you must register as a dealer and collect sales tax. You can register to collect and/or report tax through our Internet site. 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).

Every real estate brokerage firm that rents or leases real property or receives rental payments for a property owner or lessor is engaged in a taxable activity. These persons must register with us to collect and pay sales tax on rental receipts. Agents who are registering multiple commercial rental properties for management purposes must complete a separate registration 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-rata basis for tax you pay to your landlord on the subleased portion. See the example.

### Example:

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

<b>\$400.00</b>	<b>original lease amount</b>
<b>X 6%</b>	<b>sales tax</b>
<b>\$ 24.00</b>	<b>sales tax you paid to your landlord</b>

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

<b>\$300.00</b>	<b>sublease amount</b>
<b>X 6%</b>	<b>sales tax</b>
<b>\$ 18.00</b>	<b>sales tax you collect</b>

You must pay only the amount of sales tax that exceeds what you pay 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 – 100 square feet) is \$12. The tax you collected (\$18) exceeds the amount you paid on the subleased portion (\$12) by \$6. You pay \$6 sales tax to the Department of Revenue and \$24 to your landlord.

If you sublet or assign your interest in the property, or keep only a small 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 pay sales tax and the applicable discretionary sales surtax due on the subleased space. You owe “use tax and surtax” on that piece of the property you keep for your own use. In this case, you must give a signed copy of your current valid *Annual Resale Certificate* to your landlord.

## When Tax is Due

Returns and payments are due on the 1st and late after the 20th day of the month after the date the rent payment is received. For example, if a rent payment is received on the 1st of one month, then sales tax is not due until the 1st of the next month.

Returns and payments postmarked after the 20th are late. However, if the 20th falls on a Saturday, Sunday, or state or federal holiday, returns will not be late if they are postmarked on the first business day after the 20th.

If you make tax payments using electronic funds transfer (EFT), funds must be transmitted before 5:00 p.m., ET, on the business day before the 20th.

## Penalty and Interest

If returns and payments are not postmarked or hand-delivered on or before the due date, a late penalty of 10 percent of the amount of tax is due. A minimum penalty of \$50 is assessed on late returns, even if no tax is due. Penalty also applies if the return and/or payment is timely but is incomplete.

A floating rate of interest applies to underpayments and late payments of tax. We update the rate January 1 and July 1 of each year by using the formula established in section 213.235, Florida Statutes. Current and prior period interest rates are posted on our web site.

## Tenant Liability

If you cannot prove that sales tax has been paid to your landlord, you are directly liable to the Florida Department of Revenue for any unpaid sales tax, surtax, 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](http://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

## Get the Latest Tax Information

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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