

Alert | State & Local Tax/Real Estate

December 2018

Florida Sales Tax on Commercial Real Property Leases Reduced Beginning January 2019

As commercial real property owners in Florida are likely aware, the Sunshine State imposes its sales tax on rental payments for the lease of real property. The general 6 percent state-level tax was reduced to 5.8 percent for 2018. The legislature passed a law to further reduce the state-level rate to 5.7 percent for occupancy periods beginning on or after Jan. 1, 2019. There is no reduction in the local option surtax that many Florida counties impose. Property owners should be aware of this reduction for lease payments related to periods starting next year.

Florida is somewhat unique in taxing real property leases. The tax is imposed not only on the base rent, but also on any additional rent, or any consideration required to be paid by the tenant as a condition of occupancy. As a result, the tax is also due on the tenant's share of common-area maintenance charges, real property taxes, and most other charges required under the lease.

In addition to this 5.7 percent tax rate, a landlord must also collect the local-option surtax imposed by many Florida counties, which varies between 0.5 percent and one percent. There is no reduction in the rate of this local tax. For example, beginning Jan. 1, 2019, lease payments in Miami-Dade County will be taxed at a rate of 6.7 percent, because Miami-Dade County imposes a local surtax at a one percent rate.

Although the new 5.7 percent state-level tax rate is effective Jan. 1, 2019, this reduced tax rate is applicable to the lease period to which the rent relates. Accordingly, if a landlord receives rent payments in 2019 for December 2018 occupancy, the 5.8 percent state-level rate would still apply (plus the applicable local surtax). On the other hand, if a tenant pays the rent for January 2019 in December 2018, the 5.7 percent rate would apply.

It is also important to remember that a lease of residential property is subject to the sales tax on transient rentals unless the rental is under a bona fide written lease for a period of longer than six months. The rate of this tax on transient rentals will remain at 6 percent (plus local option surtax). Furthermore, a lease of residential real property that is taxable as a transient rental (because it does not satisfy the six-month bona fide written lease requirement) is also subject to local tourist-development taxes. The rate on these local tourist-development taxes varies from 5 percent to 7 percent for most major counties. There is no reduction in the tax rates of these local tourist-development taxes.

Furthermore, the reduction in the rate does not apply to charges for parking a motor vehicle, for docking a vessel, or for tying down or hangaring an aircraft.

Landlords and management companies sending out invoices for rental periods commencing on or after Jan. 1, 2019, should revise their invoice software to account for the 0.1 percent reduction in the state tax rate.

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