FLORIDA'S TAXATION OF LEASE CONTRACTS: WHAT'S LEFT AFTER THE COMMERCIAL LEASE TAX IS GONE?

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The big story in Florida taxation during and after the 2025 legislative session was the abolishment of Florida's tax on commercial leases of real property. Florida's lonely status as the only state applying a tax on such leases was removed when the legislature voted to abolish the tax effective October 1, 2025.[1]

Though the tax on commercial leases of real property is no more, other types of leases are still subject to Florida sales and use tax. Most prominently, leases of tangible personal property (TPP) — especially equipment — are subject to sales and use tax under F.S. Ch. 212. These arrangements are worth a close examination, as the way they are structured can impact the tax consequences to the parties. In fact, what looks like a simple equipment lease could potentially be taxed in multiple different ways — with different tax consequences — depending on the details and intentions of the parties. This article examines ways that leases involving TPP and real property can be treated for tax purposes, and notes planning opportunities available due to such differential treatment.

Taxation of TPP Leases: In General

Florida generally imposes sales and use tax on transactions involving the purchase, lease, or use of tangible personal property.[2] The tax applicable to such transactions consists of two components: a state-level 6% tax and a county-level discretionary surtax.[3] The discretionary surtax rates differ from county to county, and in 2025 ranged from 0% to 2% depending on the county in question.[4] Tangible personal property is generally defined as "personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy," and also includes boats, aircraft, and other vehicles.[5]

The discretionary surtax is limited to the first $5,000 of each sale or use transaction.[6] As applied to leases of equipment and other TPP, each payment under the lease is treated as a separate taxable transaction for the purpose of the $5,000 limitation. Stated differently, the discretionary surtax applies to the first $5,000 of each separate payment under the lease.[7]

Liability for the surtax accrues at the time of each payment.[8] This presents a planning opportunity for well-advised taxpayers to make use of higher and less frequent lease payments to effectively "cap" the discretionary surtax amount.

The most common type of TPP lease is an "operating lease."[9] Under an operating lease, tax is imposed on the "gross proceeds" of all leases of TPP in the state of Florida when the lease of the TPP is part of the regularly established business of a taxpayer, or such lease of TPP is "incidental or germane" to such business.[10] The tax becomes due and payable by the lessee of the TPP to the lessor when the lessee is required to pay each agreed payment. This obligation is without regard to whether the lessee complies with the obligation to pay the agreed payment(s) to the lessor.[11] The term "gross proceeds" is defined to include the total consideration agreed on by the parties for the lease of the TPP. This can include, in addition to the amount attributable to the rental of the TPP, any interest charges, ad valorem taxes due to the lessor by the lessee or other person that actually uses the TPP; any portion of an insurance premium due to the lessor by the lessee or other person actually using the TPP; and freight charges incurred as part of the lease transaction.[12]

The Florida Department of Revenue has by rule provided a definition of what constitutes a "lease" for purposes of taxation.[13] Importantly, the right to move the TPP is not essential to the creation of a lease. The key is the transfer of possession evidenced by one of three attributes: 1) actual or constructive custody or possession of the TPP; 2) the right to the custody or possession of the TPP; or 3) the right to use or control the TPP or the right to direct such use.[14] For those taxpayers whose businesses involve leasing TPP, it should be noted that they can make tax-free purchases of TPP that are intended to be leased to third parties as purchases for resale.[15] The same rule applies to the lease of TPP for re-lease: only the lease to the ultimate consumer is taxed.[16] However, subsequent conversion to one's own use will change this treatment.[17]

The rules regarding taxation of leases on TPP revolve around the location of the TPP at the time of lease. Even out-of-state owners or lessors are considered to be doing business in Florida when their TPP is in Florida and is in the possession of a lessee. In such case, the owner or lessor is then required to register and comply with F.S. Ch. 212.[18] The lease of TPP that is used or stored in Florida is taxable regardless of its prior use or tax paid on the purchase thereof outside of Florida.[19] Further, TPP leased and removed from Florida by the lessee will not be subject to tax if the lessee provides the lessor a signed certificate identifying the property and the date the property was or will be removed from Florida.[20]

TPP Lease or Commercial Lease of Real Property?

The characterization of lease contracts that include both real property and TPP has become critical with the repeal of the tax on commercial leases of real property. A planning opportunity, thus, arises for preferential tax treatment when a lease of real property also includes TPP-like machinery or equipment. Stated differently, if a lease of real property that includes equipment can be viewed as a real property lease with the equipment as fixtures to that real property, then no tax would be owed on the lease as of October 1, 2025.

Prior to the 2025 repeal, commercial leases in Florida were subject to a 2% state sales tax under F.S. §212.031, plus any applicable discretionary sales surtax. This tax was imposed on "the business of renting, leasing, letting, or granting a license for the use of any real property."[21] The real property that is subject to tax when leased includes "the surface land, improvements thereto, *and fixtures*, and is synonymous with 'realty' and 'real estate.'"[22]

This definition of real property is materially the same as that found in F.S. §212.06, which appears in the context of defining when a contract is for the improvement of real property.[23] The term "fixtures" is further defined in §212.06 as follows:

> *"Fixtures" means items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner: property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except mobile homes assessed as real property, or industrial machinery or equipment. For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.*[24]

The definition above specifically excludes "industrial machinery or equipment" from the definition of a "fixture" to real property. The department amplifies this definition of such machinery or equipment in Rule 12A-1.051, which reads as follows:

> *(e)1. "Machinery or equipment" means and includes property that:*

> *a. Is intended to be used in manufacturing, producing, compounding, processing, fabricating, packaging, moving, or otherwise handling personal property for sale or other commercial use, in the performance of commercial services, or for other purposes not related to a building or other fixed real property improvement; and,*

> *b. May, on account of its nature, be attached to the real property but which does not lose its identity as a particular piece of machinery or equipment.*

> *2. "Machinery or equipment" generally does not include junction boxes, switches, conduits, wiring, valves, pipes, and tubing incorporated into the electrical, cabling, plumbing, or other structural systems of fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment.*

> *3. "Machinery or equipment" serves a particular commercial activity that is carried on at a location rather than serving general uses of land or a structure. Examples of machinery or equipment include conveyor systems, printing presses, drill presses, or lathes. Examples of items that are not machinery or equipment because they are integrated into the structure or realty and retain their usefulness no matter what activity is carried on at the site include heating and air conditioning system components or water heaters. Any property that would be classified as machinery or equipment under Section 212.08(5), F.S., or any other provision of Chapter 212, F.S., is considered to be machinery or equipment for purposes of this rule. In the case of property used in the production of electrical or steam energy, any item that would qualify as exempt machinery or equipment under Section 212.08(5)(c), F.S., is considered to be machinery or equipment for purposes of this rule.*[25]

Under the definition set forth above, the key to determine whether "machinery or equipment" is of a type that does not become a fixture is the use of such TPP in commercial activities that are not "serving the general uses" of land or the building.[26]

Effectively, this means that a lease of machinery or equipment as defined by the rule cannot be treated as a lease of real property as such machinery or equipment can never become a fixture to real property.[27] This dynamic is key to determining the taxability of leases that include both real property and items of TPP that could be considered "machinery or equipment," which by rule cannot become fixtures that are part of the real property.

When a lease includes both real property and TPP, to determine the taxable nature of the lease one must review the character of the payments being made. The tax on real property leases is based on "the total rent or license fee charged" for the privilege of "renting, leasing, letting, or granting a license for the use of any real property."[28] This formulation of taxable rent as amounts paid for the privilege of occupying real property will be familiar to practitioners who have spent their careers explaining to clients that payments related to occupation of real property — including when tenants pay the ad valorem taxes that would otherwise be the responsibility of the property owner — are taxable rent charges under the statute.[29]

Therefore, if any part of the lease payment is being made for the privilege of occupying real property, the lease can potentially be categorized either in whole or in part as a commercial lease of real property. A complication arises when the lease payments may not be clear as to

whether part of the amount paid is related to the use of TPP at the location that qualifies as "machinery or equipment" that cannot be a fixture to the real property. The question then becomes one of whether any part of the lease is an equipment lease rather than a commercial lease of real property.

The fact that commercial leases of real property are now free from tax makes the consideration quite important for practitioners and their clients. There is little guidance in the statutes, rules, or administrative pronouncements by the department that sheds light on how such determinations are to be made.

Despite this relative lack of clarity, a ready analytical tool is available in Rule 12A-1.051, which governs the taxation of mixed contracts for improvements to real property. The rule provides a "predominant purpose" test to be applied when determining the taxability of contracts for improvements to real property that also involve TPP.[30] The concept set forth in the rule provides a facts and circumstances test for determining whether a contract is predominantly a real property improvement contract where sales and use tax is paid by the contractor, or whether the contract is predominantly one involving tangible personal property where sales and use tax is paid by the ultimate consumer.[31]

A similar facts and circumstances test could be applied to leases that involve both leases of real property and TPP. In such an analysis, the caselaw and administrative decisions applying the test under Rule 12A-1.051(8) could be instructive on how such an analysis could accomplished. If a taxpayer is able to demonstrate that the predominant purpose of a contract is the lease of the real property rather than the lease of TPP, then the transaction could be considered a tax-free lease of real property.

As a caveat to this analysis, if the contract at issue separately allocates the taxable and non-taxable portions of the charge to the customer, then the department may treat the charges separately for tax purposes.[32] This dynamic should be considered by practitioners when drafting lease documents.

Is the Lease a Mortgage?

With the elimination of the commercial rental tax, a somewhat niche consideration may gain new life: whether a lease of real property is truly a mortgage subject to documentary stamp taxes and nonrecurring intangible tax. Due to the relatively large tax on commercial lease payments, the department has not had a reason to examine leases closely to see if they could be taxed as mortgages given the potentially lower tax rate that could be applied. This dynamic may gain new traction if the department determines that *any* tax is better than *no* tax on real property leases and decides to push the envelope.

As a matter of background, Florida generally imposes a tax on promissory notes; nonnegotiable notes; written obligations to pay money; assignment of salaries, wages, or other compensation; mortgages; trust deeds; security agreements; and other evidences of indebtedness (taxable documents) that are filed or recorded in the state.[33] Also included are any renewals of such instruments, unless exempt under F.S. §201.09.[34] The rate of tax is set at 35 cents on each $100, or fraction thereof, of the indebtedness or obligation. However, the tax is capped at $2,450 on promissory notes, nonnegotiable notes, written obligations to pay money, assignments of wages, or other compensation.[35]

In addition to the documentary stamp tax described above, there is also imposed a nonrecurring intangible tax. The one-time nonrecurring tax of two mills is imposed on each dollar of the just valuation of all "notes, bonds, and other obligations for payment of money which are secured by mortgage, deed of trust, or other lien upon real property" in the state of Florida.[36]

In some instances, what may appear to be a lease may actually be a mortgage, as it is not necessary that a document be referred to as a mortgage for it to be classified as such. To that end, F.S. §697.01 provides that "[a]ll conveyances, obligations conditioned or defeasible, bills of sale or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money...shall be deemed and held mortgages."[37] This language is quoted and incorporated in Rule 12B-4.052, Florida Administrative Code, which codifies the department's rules on taxation of mortgage documents.[38]

In a 2004 Technical Assistance Advisement (TAA), the department addressed the question of whether a lease was actually a mortgage for tax purposes.[39] Though TAAs are not precedential statements, they are useful tools in analyzing how the department has treated certain fact patterns in the past.[40]

In TAA 04M-002, the department emphasized substance over form in determining that a deed, lease, mortgage, and related agreements were part of a "financing arrangement/mortgage," rather than a lease because, taken altogether, the documents were intended to secure payment of money to a lender and were part of the same financing arrangement to refinance an existing mortgage. Thus, documentary stamp tax was due under §201.08(1), but no tax was owed under §201.02(1). It was further determined that intangible tax was owed under §199.133 as an obligation secured by a lien on real property.[41]

In determining whether the arrangement was a lease, and taxable under F.S. §212.031, the department looked at several factors that weighed against classifying the transaction as a lease: 1) The transaction concerned securing a loan rather than creating a lease. The lease was merely a necessary vehicle for such security; 2) the rent charged was directly tied to servicing

the debt obligation rather than a fair market rental value; 3) the landlord entity created prior to the parties structuring the transaction was a sole purpose financing entity created to facilitate the loan process as revealed by the operating agreement of that entity; 4) the short-term and long-term risks and benefits of the property fell on the tenant, thus, indicating ownership; 5) title to the property would ultimately pass to the tenant. These factors all led to the department's determination that the lease was not a lease, but a mortgage.[42]

Practitioners should, therefore, be alert to any circumstances under which a now exempt commercial lease of real property could be recast as a taxable mortgage on audit by the department. This is particularly important now that this concept provides a way to make otherwise exempt commercial leases of real property into taxable transactions.

TPP Lease or Non-Taxable Service?

When a contract involves both the temporary provision of TPP along with a service, the question arises as to whether the lease is predominantly a taxable lease of TPP or a non-taxable service contract.[43] A common example of this type of contract is found in the waste removal industry, where contracts normally involve the temporary provision of a dumpster on a customer's property and subsequent removal of that dumpster. The question in such a contract is what the purpose of the transaction is for the customer: Is it a rental of the dumpster (taxable lease of TPP), or is it a non-taxable service charge for waste removal?

The starting point for the analysis is Fla. Admin. Code Rule 12A-1.071(9), which addresses taxation of contracts that involve the use of equipment to perform a task. This rule section provides as follows:

> *(a) A transaction involving the use of equipment with an operator supplied by the owner of the equipment is a lease if control or direction over the use of the equipment passes to the customer.*
>
> *(b) When the operator of the equipment is on the payroll of the lessee, the contract constitutes a rental of tangible personal property and is subject to the tax.*
>
> *(c) A transaction is not a lease if it is for the performance of a specific job in a manner to be determined by the owner or his operator.*
>
> *(d) When the owner of equipment furnishes the operator and all operating supplies, and contracts for their use to perform certain work under his direction and according to his customer's specifications, and the customer does not take possession or have any direction or control over the physical operation, the contract constitutes a service transaction and not the rental of tangible personal property, and no tax is due on the transaction.*[44]

The key under the rule is whether the customer controls the use of the equipment or takes possession of the equipment. While such an analysis would be subject to a case-by-case facts and circumstances analysis, an analytical guide for reviewing such contracts can be found in the department's treatment of contracts for dumpster rentals.

Specifically, in a 2023 TAA, the department found that dumpster rentals were a nontaxable service rather than a rental of TPP.[45] In TAA 23(A)-012, the taxpayer was a broker that coordinated the provision of dumpsters to customers along with the service of waste removal — effectively, the dumpster was placed on the customer's property and then was hauled away when full.[46] The department reviewed the entirety of the transaction and found that the ultimate value to the customer was the removal of the waste, stating that "[t]he customer is paying consideration for the nontaxable garbage/waste disposal service, not for the rental or possession of a dumpster."[47]

The analysis can be somewhat ambiguous when TPP is placed on a customer's property, in that the question of "possession" of the TPP may be unclear. Helpfully, the Fourth District Court of Appeal clarified the analysis of such fact patterns in the case of *Warning Safety Lights of Georgia, Inc. v. Department of Revenue*, 678 So. 2d 1377 (Fla. 4th DCA 1996). In *Warning Safety Lights*, the court held that a taxpayer that installed temporary traffic control devices under a contract with the Florida Department of Transportation was not engaged in a taxable rental of TPP, but was instead performing a service for which the TPP was an incidental part.[48] The court held that the customer (the Florida DOT) never took possession of the traffic control devices.[49] Quoting Rule 12A-1.071, the court held that a finding that the TPP was leased to the customer without control passing to the customer would violate the rule.[50]

In so holding, the court observed that "[a]lthough the barricades are not unusable in and of themselves, it is [the] service of setting up and maintaining the temporary traffic control pattern which provides the ultimate value to the DOT and the prime contractor to facilitate the completion of the road construction project."[51]

The key to analyzing the taxability of a contract that involves the use of TPP and the provision of a service is, therefore, where the ultimate value of the contract lies: Is it in the TPP, or is it in the service that the TPP is merely a component? If possession or control of the TPP never transfers to the customer and the value of the contract is in the service rather than the TPP itself, then the contract can constitute a contract for a non-taxable service. Practitioners with clients who perform services that involve the use of TPP would be well advised to draft clear language regarding the service provider's retention of possession of the TPP and that the ultimate value of the contract is the service itself in order to avoid creating a taxable lease of TPP.

TPP Lease or Conditional Sale?

Another consideration for equipment lease contracts is whether the lease might be considered a "conditional sale" rather than a traditional operating lease. An equipment lease becomes a conditional sale when the lease transfers "substantially all the benefits" and risks of ownership to the lessee, *or* if the lease grants the lessee a purchase option for a nominal amount.[52] A "nominal amount" is defined as an amount that does not exceed the lesser of $100 or 1% of the total contract price.[53]

The tax consequences of a conditional sale lease are vastly different than for an operating lease. The key difference is that under a conditional sale, tax is due in full on the total amount of the payments under the contract at the beginning of the lease term.[54] This means that the lease is treated like a sale, and the tax is due at the start based on the sum of the lease payments to be made over time.[55]

Practitioners must take care to not accidentally create a conditional sale by including a purchase option for a nominal amount. The circumstances in which this might arise and cause tax liability are easily illustrated. Consider a lessee that enters into a five-year equipment lease. Though the lease contains a nominal purchase option at the end of the lease term, both the lessee and the lessor treat the lease as a normal operating lease with tax due on each monthly payment. If the department audits the lessee in year three of the lease, the department may conclude that the lease, due to the nominal purchase option, should have been treated as a conditional sale from the start. This means that tax should have been paid on *all* the lease payments due — all five years of them — when the lease was executed. An assessment of tax, penalty, and interest for the unpaid amounts would likely ensue.

Conversely, it may be advantageous for practitioners to structure certain equipment leases as capital leases from the start. There may be business reasons that a lessee may want to pay the tax in advance at the start of the lease rather than paying tax on each lease payment over time. Similarly, if the equipment is of a type that may qualify for a sales and use tax exemption, it may be beneficial to all parties to structure the lease as a conditional sale to document that no tax is due at all at the inception of the lease.[56]

Whatever is intended, it is important that the parties to a lease that could be considered a conditional sale include in the lease document terms that define how they intend the lease to be taxed under Florida law. This is key, as the department will apply a facts and circumstances test to the provisions of the lease to discern whether it should be treated as a conditional sale.[57]

Conclusion

Lease contracts continue to be a source of tax revenue for Florida. The repeal of the commercial rental tax has opened the door for planning opportunities for lease contracts that involve both real property and TPP in ways that have never existed before. Practitioners should be aware of these dynamics both when drafting lease contracts and in noting potential issues and opportunities presented by existing client documents.

[1] The Department of Revenue helpfully outlined various consequences of the repeal in Tax Information Publication 25A01-04, issued July 24, 2025. *See* TIP 25A01-04, *available at* **https://floridarevenue.com/taxes/tips/Documents/TIP_25A01-04.pdf**. Though the repeal is effective October 1, 2025, the authors note that audit liability exists for the tax for periods prior to the effective date. For more on Florida's former status as the only state applying a direct tax on commercial leases, *see* H. French Brown IV, *2025 Florida Session Update: Historic Tax Relief and Elimination of the Florida-Only Business Rent Tax*, Fla. Bar Tax Section Bulletin, Vol. XLI, No. 3 (Summer 2025).

[2] Fla. Stat. §212.05 ("It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making or facilitating remote sales; who rents or furnishes any of the things or services taxable under this chapter; or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.").

[3] Fla. Stat. §212.05(1)(a), (1)(b) (6% state sales and use tax); Fla. Stat. §212.054 (discretionary surtax).

[4] *See* Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2025*, Form DR-15DSS, *available at* **https://floridarevenue.com/Forms_library/current/dr15dss.pdf**. This surtax publication is generally updated each year with the current rates applicable in each county.

[5] Fla. Stat. §212.02(19).

[6] Fla. Stat. §212.054(2)(b)1.

[7] Fla. Admin. Code Rul. 12A-15.004(2)(b) ("Each lease or rental payment made, or contracted to be paid, for the lease or rental of tangible personal property by a lessee or renter represents one taxable transaction. The surtax applies to the first $5,000 of the lease or rental payment when the lease or rental payment is due. Liability for the immediate payment of the tax on all the payments required under the lease or rental does not arise at the time of the execution of the lease or rental.").

[8] *Id*.

[9] In the view of the authors, operating leases are the most common type of lease that clients are likely to encounter.

[10] Fla. Stat. §212.11(3).

[11] Fla. Admin. Code Rul. 12A-1.071(1)(c)1.

[12] Fla. Admin. Code Rul. 12A-1.071(1)(c)2.a.-d.

[13] *See* Fla. Admin. Code Rul. 12A-1.071(1)(a) ("[T]he term 'lease' includes any rental or license to use tangible personal property, unless a different meaning is clearly indicated by the context in which it is used. The term refers to all transactions that are not bailments in which there is a transfer of possession of tangible personal property, without regard to limitations upon the use, for a consideration, without a transfer of title to the property.").

[14] Fla. Admin. Code Rul. 12A-1.071(1)(b)1.-3.

[15] *See* Fla. Admin. Code Rul. 12A-1.071(2)(a) ("[TPP] purchased exclusively for leasing purposes by a dealer registered with the [d]epartment at the time of purchase may be purchased tax-exempt. The purchasing dealer is required to issue a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase in lieu of paying tax, as provided in Rule 12A-1.039, F.A.C.").

[16] *Id*. This is in line with Florida's general policy of avoiding any "pyramiding" of tax — the only incidence of tax should be on the ultimate consumer. Fla. Stat. §212.12(11) ("It is hereby declared to be the legislative intent that, whenever in the construction, administration, or enforcement of this chapter there may be any question respecting a duplication of the tax, the end consumer, or last retail sale, be the sale intended to be taxed and insofar as may be practicable there be no duplication or pyramiding of the tax.").

[17] Fla. Admin. Code Rul. 12A-1.071(2)(b)2. In such a case, the original amount of tax that should have been paid on the purchase of the TPP will be owed at the time of conversion. The tax amount due will be based either on the fair market value of the TPP at the time of conversion, or, if that cannot be determined, on the original cost of the TPP at the time of acquisition. *Id*.

[18] Fla. Admin. Code Rul. 12A-1.071(3).

[19] *Id*.

[20] Fla. Admin. Code Rul. 12A-1.071(4).

[21] Fla. Stat. §212.031(1)(a). All citations in this article to Fla. Stat. §212.031 and the regulations promulgated thereunder, are to the statutes and regulations in place prior to the repeal of the commercial rental tax, which took effect October 1, 2025. *See* Ch. 2025-208, §37, Laws of Fla. (2025) ("Effective October 1, 2025, [§]212.031, Florida Statutes, is repealed.").

[22] Fla. Admin. Code Rul. 12A-1.070(1)(d) (emphasis added).

[23] *See* Fla. Stat. §212.06(14)(a) (real property includes "the land and improvements thereto and fixtures").

[24] Fla. Stat. §212.06(14)(b) (emphasis added).

[25] Fla. Admin. Code Rul. 12A-1.051(2)(e) (emphasis added).

[26] *Id*. at (2)(e)3.

[27] *See* Fla. Admin. Code Rul. 12A-1.051(2)(c)4.b. (defining "fixture" to not include "machinery or equipment" and Fla. Admin. Code Rul. 12A-1.051(2)(e) (defining the "machinery or equipment" which does not qualify for treatment as a "fixture").

[28] Fla. Stat. §212.031(1)(a), (c).

[29] Fla. Admin. Code Rul. 12A-1.070(4)(c), codified the inclusion of ad valorem taxes paid by a tenant as taxable rent. This concept originated in the Second Circuit decision in *Seaboard Coast Line Railroad Co. v. Askew*, Case No. 72-15 (Fla. Cir. Ct. 1972), and was later codified by rule. For more on this, and on the ambiguity of what charges could be considered taxable rent, *see* Steven M. Hogan, *Taxation of Related-Party Commercial Leases in Florida*, 85 State Tax Notes 601 (Aug. 7, 2017).

[30] Fla. Admin. Code Rul. 12A-1.051(8).

[31] *Id*. at (8)(c).

[32] *See id*. at (8)(d) ("If a mixed contract clearly allocates the contract price among the various elements of the contract, and such allocation is bona fide and reasonable in terms of the costs of materials and nature of the work to be performed, taxation will be in accordance with the allocation.").

[33] Fla. Admin Code Rul. 12B-4.052(5) (defining "taxable documents"; implementing Fla. Stat. §§201.08 and 201.09).

[34] *Id.*

[35] Fla. Stat. §201.07; Fla. Stat. §201.08(1)(a).

[36] Fla. Stat. §199.133(1).

[37] Fla. Stat. §697.01(1).

[38] Fla. Admin. Code Rul. 12B-4.052(7).

[39] Technical Assistance Advisement 04M-002 (Nov. 16, 2004).

[40] *See* Fla. Stat. §213.22(1) ("Technical assistance advisements shall have no precedential value except to the taxpayer who requests the advisement and then only for the specific transaction addressed in the technical assistance advisement, unless specifically stated otherwise in the advisement."). Though TAAs are not binding on other taxpayers, they serve as authoritative statements of the Department's position on legal issues that they address. *See Dep't. of Rev. v. Lockheed Martin Corp.*, 905 So. 2d 1017, 1019-20 (Fla. 1st DCA 2005) (discussing TAAs to show the department's inconsistent interpretation of a statute); *Dep't. of Rev. v. Quotron Systems, Inc.*, 615 So. 2d 774, 777 (Fla. 3d DCA 1993) (acknowledging that a TAA binds only the department and the taxpayer that requested it, but discussing TAAs that contradicted the department's legal position).

[41] Technical Assistance Advisement 04M-002 (Nov. 16, 2004).

[42] *Id*.

[43] Most services are not subject to sales and use tax in Florida. Specifically taxed services include detective, burglar protection, nonresidential cleaning, and nonresidential pest control services. Fla. Stat. §212.05(1)(i). Florida experimented with a tax on numerous services in the 1980s, but that experiment quickly ended after intense opposition from advertisers and other groups. For more on the short-lived general services tax and the opposition to it, *see* Vicki L. Weber, *Florida's Fleeting Sales Tax on Services*, 15 Fla. St. U. L. Rev. 613 (1987).

[44] Fla. Admin. Code Rul. 12A-1.071(9) (emphasis added).

[45] Technical Assistance Advisement 23A-012 (June 9, 2023).

[46] *Id*.

[47] *Id*.

[48] *Warning Safety Lights of Georgia, Inc. v. Department of Revenue*, 678 So. 2d 1377, 1380 (Fla. 4th DCA 1996).

[49] *Id*. at 1380-81 (discussing the extent of possession of the TPP and holding that the customer did not have such possession — possession remained with the contractor who retained the ability to place, move, and remove such TPP).

[50] *Id*. at 1381 (quoting then-current Rule 12A-1.071(10), the text of which is now found in Rule 12A-1.071(9)).

[51] *Id*. at 1380.

[52] Fla. Admin. Code Rul. 12A-1.071(1)(d).

[53] *Id*.

[54] Fla. Admin. Code Rul. 12A-1.071(1)(f) ("In the case of a conditional-sale type lease executed on or after the effective date of this rule, the [e]xecutive [d]irector or the [e]xecutive [d]irector's designee in the responsible program will consider these to be sales and purchases from their inception with tax due and payable at the moment the contractual agreement is entered into or when the property comes to rest in this state if at a later date. Charges for interest or financing are taxable unless the rate of interest or the actual amount of interest charged is separately stated on the customer's contract.").

[55] *Id*.

[56] Fla. Stat. §212.08 contains a number of different exemptions for various types of equipment. The example given in the text could apply to any of these exemptions, though it should be noted that an exemption for a sale of TPP may also apply to a lease of the same TPP. *See*, *e.g.*, Technical Assistance Advisement 93A-006 (Jan. 29, 1993) (finding that exemption under §212.08(5)(c), which applied specifically to purchase of equipment, applied to a lease of equipment). The example is given as a way for parties to document their intent that a lease of equipment should be treated as an exempt conditional sale of such equipment.

[57] *See* Fla. Admin. Code Rul. 12A-1.071(1)(e) ("Whether a lease is a conditional-sale type lease or an operating lease shall be determined in accordance with the provisions of the agreement, read in light of the facts and circumstances existing at the time the agreement was executed.").

Steven M. Hogan *is a shareholder with the Ausley McMullen law firm in Tallahassee. His tax practice focuses on tax controversy, estate planning, and corporate matters.*

Jacob H. Huggins *is an associate with the Ausley McMullen law firm in Tallahassee. He primarily works with the firm's taxation and estate planning teams.*

This column is submitted on behalf of the Tax Section, J.J. Wehle, chair, and Charlotte A. Erdmann, editor.

Steven M. Hogan

Tax

Jacob H. Huggins

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