

Hopping Green & Sams

Attorneys and Counselors

MEMORANDUM

To: Florida Realtors Public Policy Team

From: Vicki Weber VW

Date: September 6, 2011

Re: Rules Workshop on Rent Issue

Attached is a notice of a proposed rules workshop to be conducted by the Florida Department of Revenue on September 21st. The topic of discussion is when certain payments required pursuant to a lease of or license to use real property are subject to sales tax. The Department has taken the position in a number of audits that tenant build-out requirements constitute rent subject to tax. At least one case is currently pending at the First District Court of Appeal on this issue, *Florida Department of Revenue v. Ruehl No. 925 LLC*. In that case, Judge Lewis ruled that the required improvements to the realty were not taxable as rent and he distinguished an older case, *Department of Revenue v. Seminole Clubs, Inc*, which had held that golf course improvements made by the occupant in lieu of rent were taxable. The Florida Retail Federation and Florida Hospitality Association have both filed amicus briefs in the pending case. I plan to attend the workshop. You may want to notify your commercial Realtors of this workshop since many of them likely will care about this issue.

Let me know if you have questions.

AGENDA

FLORIDA DEPARTMENT OF REVENUE

RULE DEVELOPMENT WORKSHOP

9:30 A.M., SEPTEMBER 21, 2011

**ROOM 1220, BLDG ONE, 2450 SHUMARD OAK BLVD
TALLAHASSEE, FLORIDA**

THIS MEETING IS OPEN TO THE PUBLIC

- 1. Call to Order:**
 - (a) Introduction of Department of Revenue Staff
 - (b) Opening Remarks by Department of Revenue
- 2. Business: Presentation and discussion of the proposed changes to the following rule sections of the Florida Administrative Code:**

Sales and Use Tax

Rule 12A-1.070, F.A.C. – Leases and Licenses of Real Property, Storage of Boats and Aircraft

- 3. Closing comments.**

Instructions for Internet Access of the Virtual Public Hearings

You can listen to this hearing by listening through live teleconferencing. You may participate by attending a live broadcast on the Internet using WebEx (a “virtual meeting”). To participate through the Internet, you should follow these steps:

Step 1 – Decide if you want to just listen to the meeting, OR participate by WebEx and make spoken comments. If you elect to just listen to the meeting, please see Option 2 in the Audio section of this document.

Step 2 – To watch and make spoken comments, registration to WebEx is required.

Registration: To attend the virtual meeting you must register before the meeting.

1. Register at the following link:

<https://fldor.webex.com/fldor/k2/j.php?ED=166229792&UID=1291684572&RT=MIMxMQ%3D%3D&FM=1>

2. You will be asked for your name and e-mail address.

3. Once you register, a link with instructions to attend the meeting will be sent to the e-mail address you provided to watch the virtual meeting. Your registration ID is unique to your e-mail. To register additional persons, please use the link above.

Audio:

Audio for the virtual meeting will be provided through teleconferencing. The teleconference will open at 9:20am (Eastern Time) the day of the meeting.

There are two (2) ways to join by teleconference.

Option 1: If you wish to speak during the meeting, you must attend using WebEx **AND** have a direct dial line (area code+ 7 digit phone number with no extension). When you join the meeting in WebEx, you will see a pop-up window asking for your phone number. Enter your area code + your 7-digit phone number. WebEx will then call you and join you to the meeting.

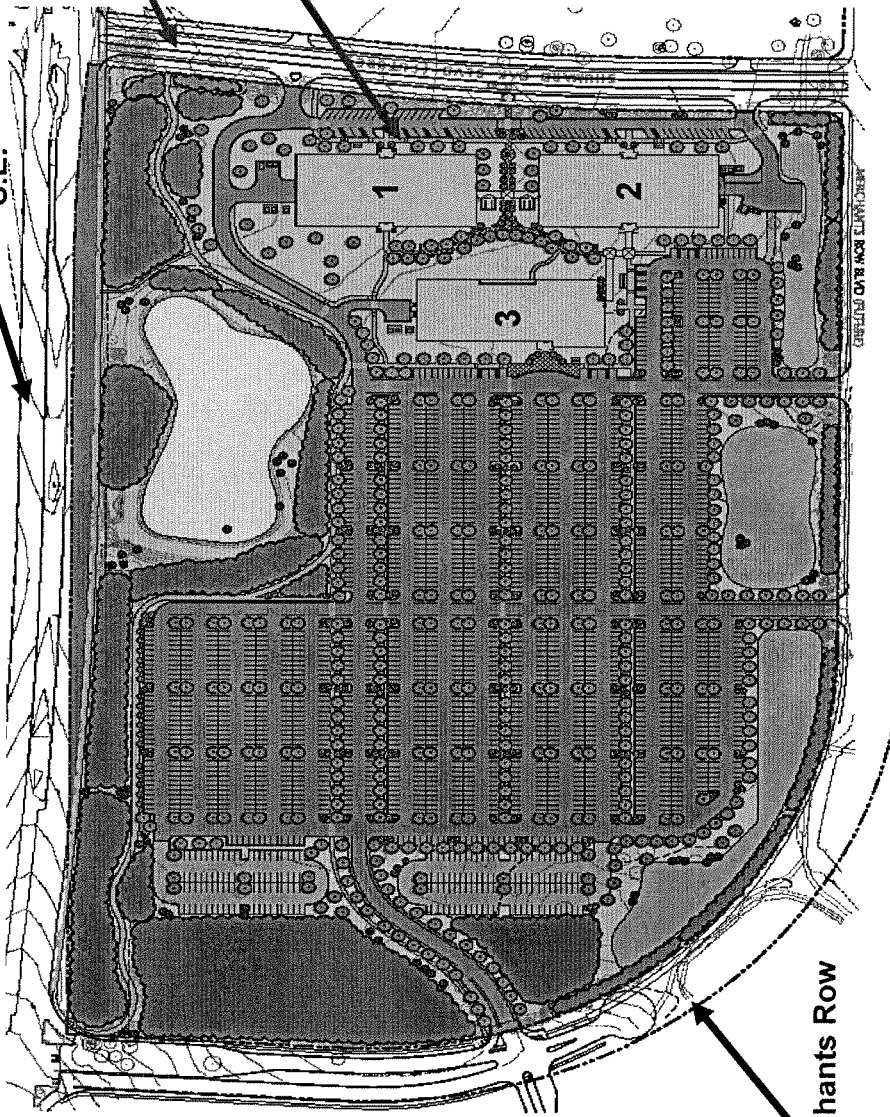
Option 2: If you do not wish to use WebEx, or do not have a direct dial line, you may join the teleconference by calling 1-888-808-6959 and enter 7983954664 followed by the # symbol for the conference code. If you join the conference in this manner, you will only be able to make comment by e-mail. To make comment by e-mail, please send your e-mail to RuleComments@dor.state.fl.us. In the subject line of your e-mail, please use "Rule 12A-1.070 Workshop 9-21-11". This e-mail address will be monitored live during the meeting.

Capital Circle
S.E.

Shumard Oak
Blvd

Visitor

Merchants Row
Blvd



From Tallahassee Airport:
Turn right onto Capital
Circle SE and travel 7.9
Miles. Turn left at Shumard
Oak Blvd.

From Interstate 10: Take exit 209 and
merge onto US Hwy 90W/Mahan Drive
toward Tallahassee. Travel 4.7 mi and turn
left at FL Hwy 26/US319S/Capital Circle
NE and travel 5.3 miles. Turn right onto
Shumard Oak Blvd. Room 1220 is located
on the first floor of Building ONE.



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FEET
SCALE
CREATED: 01/23/2009
UPDATED: 01/23/2008

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF REVENUE

SALES AND USE TAX

RULE NO.: RULE TITLE:

12A-1.070 Leases and Licenses of Real Property; Storage of Boats and Aircraft

PURPOSE AND EFFECT: The purpose of this rule development is to discuss guidelines concerning when certain expenditures or payments made by the lessee/tenant are considered part of the total rent or license fee charged for the use of real property that are subject to the tax imposed under Section 212.031, F.S. Examples of expenditures or payments may include, but are not limited to, tenant improvements and maintenance charges.

SUBJECT AREA TO BE ADDRESSED: The subject area of the rule development workshop is the development of updated procedures, consistent with current statutory provisions and court cases, regarding the tax imposed on the rental, lease, or license to use, occupy, or enter upon any real property.

RULEMAKING AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.02(10)(g), (h), (i), (j), (12), (13), 212.03(6), 212.031, 212.06(1)(b), (2)(j), (14), 338.234(2) FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW.

DATE AND TIME: [To be determined.]

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida. The public can also participate in this rule development workshop through a simultaneous electronic broadcast of this event by the Department of Revenue using WebEx, and conference calling

technology. The requirements to participate are access to the Internet and a telephone. The public can participate in this electronic workshop by accessing the broadcast from their home or office. Specific information about how to participate in this electronic meeting from your home or office will be included in the Agenda for this workshop posted on the Department's Proposed Rule site at www.myflorida.com/dor/rules.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850)617-8346. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE

DEVELOPMENT IS: French Brown, Deputy Director, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850) 717-6301.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.