

Hillsborough County Commercial Lease Sales Tax Rate Reduced by Recent Florida Supreme Court Decision

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A recent Florida Supreme Court decision¹ found that the Hillsborough County 1% transportation sales surtax is unconstitutional. As a result, the decision reduced the sales tax rate on commercial lease payments in Hillsborough County to 7%.

In a 4-1 decision, the Court held that the Hillsborough County charter amendment imposing the additional 1% discretionary surtax was unconstitutional. The amendment contained an elaborate directive for allocating the tax proceeds which unconstitutionally stripped the county commissioners of the authority to decide how to allocate such funds. As a result, the court struck down the entire charter amendment thereby reducing the Hillsborough County sales tax rate by 1%.

Accordingly, the new sales tax rate on Hillsborough County commercial lease payments (including base rent and additional rent) is now 7%. The sales tax on other services commonly provided by commercial landlords, such as parking, janitorial, security, and pest control services, is reduced to 7.5%.

In light of this decision, the Department of Revenue has issued guidance that Hillsborough County commercial landlords and property managers should immediately reduce the tax rate charged to tenants by 1%. If commercial landlords and property managers have already collected the 1% discretionary surtax for the month of March 2021, that money should be reported and remitted to the Department of Revenue on or before the next due date. Once collected, sales tax is property of the State of Florida and must be remitted to the State of Florida.

Commercial tenants should note that refunds on previously paid taxes *may* be forthcoming. While the Florida Supreme Court decision did not address what to do with the half billion dollars that has been collected from the 1% discretionary surtax since 2019, Hillsborough County commissioners have since voted unanimously to work with the Department of Revenue to create a process to issue refunds.

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[1] *Emerson v. Hillsborough County*, SC19-1250 (Fla. 2021)