Property Buyer Beware: Avoid Costly Tax Liabilities with a Sales Tax Clearance Letter

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Florida imposes sales tax on rent payable under commercial leases. The rate imposed by the state is 5.5%, but local governments have the right to impose a surtax which varies based on the jurisdiction. When buying property subject to a commercial lease, it is important to verify that the sales taxes are current since the buyer could be held accountable for any unpaid taxes. This can be accomplished by requiring the seller in the Purchase and Sale Contract to apply for a Sales Tax Clearance Letter from the Florida Department of Revenue (FDOR).

Requests for tax clearance letters should be submitted about 30 days prior to closing via the online portal on the FDOR's website. A tax clearance letter can usually be obtained in a week or so, but it may be delayed if there is a backlog. Additionally, if the person requesting the tax clearance letter is not identified on the Florida Secretary of State's sunbiz.org website as a person who is associated with the taxpayer for whom the tax clearance letter is being requested, it may be necessary to provide a power of attorney. (The form is available on the FDOR's portal.)

A tax clearance letter may not be issued if there is an audit underway. If a seller has not paid its sales taxes at any time during the three years prior to the closing, the buyer may be required to pay them.

The contract should require the seller to provide the buyer with a copy of the seller's written application or confirmation of its online application. The seller should also be required to provide the buyer with the tax clearance letter once it is received from the FDOR.

If for any reason a tax clearance letter will not be issued, the FDOR will notify the seller. The seller should then provide the buyer with the FDOR's response, along with any documentation indicating the last date through which Florida sales tax returns (Form DR-15) have been filed with the FDOR and whether any outstanding liabilities are due with respect to those returns.

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On or prior to the closing date, the seller should (i) remit to the FDOR any outstanding sales tax amounts set forth in any FDOR response and all other Florida sales tax collected by the seller and not remitted to the FDOR as of the closing date, and (ii) file with the FDOR a final Form DR-15. The contract should contain an affirmative obligation on the part of the seller to pay to FDOR any and all sales tax due on rents paid or owing under the leases prior to closing. The seller should also indemnify the buyer for any liabilities incurred by the buyer as a result of the seller failing to pay it, which is an obligation that should survive closing.