# The Taxing Truth About Rent – Contemplating a Rent Tax In Your Lease Form

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In negotiating leases throughout the country, I've noticed recently that the concept of "rent tax" has increasingly become a point of contention. Though everyone understands the ubiquitous concept of traditional real estate taxes, for those who do not routinely handle business in states which also assess a so-called "rent tax", the concept can be somewhat confusing. As an increasing number of states adopt a rent tax (or some variation thereof), keen deal makers are now forced to pay attention to the potential for additional tax overhead. Whether those deal makers are expanding their footprint to open new stores or to develop new retail projects, rent tax is an issue that both landlords and tenants must understand.

Most simply, rent tax is much like the state or local sales tax that we all pay when we make our day-to-day purchases. When we patronize a retailer while running our weekly errands, the retailer collects the sales tax assessed upon your purchase and submits that sales tax on our behalf to the local taxing authority.

In Florida, for example, the state assesses a sales tax on rent whereby, similar to a traditional sales tax on goods and services, landlords collect the taxes paid by tenants and submit them to the local taxing authority. Quite like the sales tax to which we've all grown accustom as consumers, the tenant is acting as the tax-paying patron, and the landlord is acting as the retailer by collecting the sales tax and submitting it to the taxing authority. While the obligation to pay the rent tax can always be a negotiated deal point between the contracting parties, the standard in Florida is that the rent tax is paid by the tenant.

Attempting to attract new businesses under the guise of being a "low tax", "business-friendly" state, a number of states have done away with a state income tax. And it may be working, as it seems that the states which have done away with state income taxes always make the short-list when it comes to "where does our company expand next?" Those foregone state income tax revenues, however, must come from somewhere, and states have found alternative methods of filling the government coffers. Enacting a rent tax has become an increasingly popular method of keeping the tax revenues flowing while allowing certain states to create or maintain the perception of being relatively business and consumer-friendly.

Lately, a number of states have realized that a sales tax on rent enables them to capture additional taxes without so obviously hitting the pockets of the average consumer. In addition to Florida, Arizona, Texas, New York and Ohio have all enacted some form of rent tax, whether actually characterized as a rent tax, or otherwise. Texas, by way of example, characterizes its tax as a "margin tax" rather than as a rent tax. More on the differences between a "rent tax" and a "margin tax" in a later article – you're welcome!

When doing business in "rent tax" states, whether as a tenant opening new stores or as a landlord attempting to create a realistic pro-forma, it's important to understand what a rent tax can do to your bottom-line. When deal margins are thin, an additional seven percent (7%) rent tax can quickly turn a tight deal into an impossible deal.

While all good lease forms utilized in "rent tax" states should contain language affirmatively addressing the rent tax and the relative obligations of the parties, it's also important that lease forms utilized in non-“rent tax” states allocate relative responsibilities should a rent tax be adopted in the future. Leases spanning years and even decades are signed on a daily basis, and it’s imperative to remember that laws are always changing. Though a rent tax may not be assessed in your state today, there’s always the chance that one could be enacted in the future. If so, the “rent tax collector” will certainly come knocking, and a lease which anticipates rent tax issues and allocates responsibilities is one that will serve all parties well.

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