



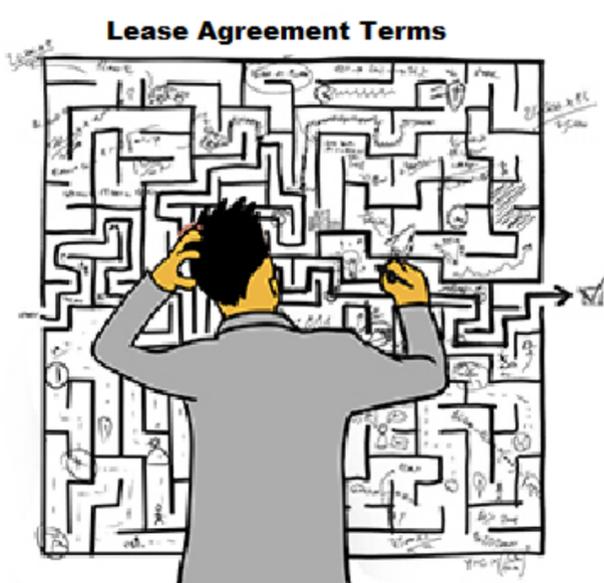
## WHAT DOES THE WORD "LEASE" EVEN MEAN IN FLORIDA?

Even bad stories start from the beginning so let's just start the story of Florida leases from the beginning. Florida Statute 212.031(1)(a) states:

It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property ...

Ok, so leases are one of the taxable privileges. So what's a lease? Florida Technical Assistance Advisement 84A-010 discusses what qualifies an agreement as a lease:

The purpose of Section 212.031, F.S., is to levy a privilege tax on persons engaging in the business of renting real property. In deciding whether a particular arrangement is a rental of real property, the Department looks for the essential elements of the agreement which include the following characteristics: a) a contract between lessor and lessee, for the conveyance of a present estate in the realty, in return for payment of rent; b) transfer of a present estate in the realty, which includes the lessee's right to exclusive possession and control of the leased premises, without interference by the landlord; c) identification of the specific area to be occupied by the lessee; d) the right to assign or sublet; e) a specific term; f) a written agreement evincing the intention; g) the intention of the parties as revealed by the language employed in establishing their relationship; and h) other conduct evincing the intention, and the absence of conduct inconsistent with the intention.



Huh? What? What the heck is an essential element and why are there 8 listed? What ever happened to a lease just being some sort of rental agreement for the small apartment you started out in? Or just being the paper you sign to get a car you couldn't afford to buy? Yes, there are agreements that are obviously leases but those aren't the agreements that usually lead to sales tax issues. Usually, at least.

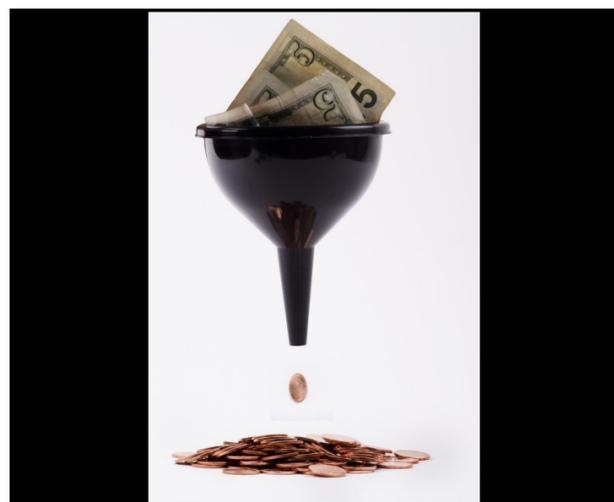
Is there Florida case law that defines leases? Sort of. While there are cases that discuss what factors are considered when determining whether something is a lease or not, there's certainly not a black-and-white answer.

For instance, is something a taxable lease or a nontaxable managerial agreement? Do things like setting the hours of operation or who gets to decide the color of the exterior paint change the taxability of the agreement?

Our point isn't to discuss the taxability of leases in Florida. Our point is that, especially for sales tax purposes, different states define the same word differently and definitions are rarely as simple as one may think. Assuming something is a lease when it is not could lead to an overpayment of tax while assuming something is not a lease when it really is could lead to an underpayment of tax. Like the old saying goes, "When you assume, you make..."

**If you're uncertain how an agreement will be viewed for sales tax purposes or are just now realizing you may have made some assumptions you thought were obvious but may not be, contact us. We're here to help you!**

### SALES TAX OFFER-IN-COMPROMISE SUCCESS!



A client who owns a small deli on the east end of Long Island came to us with a tax assessment of approximately \$210,000 which they could not afford to pay. They are a seasonal business after all, and planned to go out of business in the next year since they were no longer making a profit. In addition to the liability from the first audit, the business was undergoing a second audit that was not going well and appeared to be headed towards another assessment of over \$200,000.

Sales Tax Defense immediately filed an Offer-In-

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We are a dedicated team of sales and use tax professionals who have committed our careers to helping businesses and fellow professionals with sales and use tax problems.

Since the only work we are focused on is sales tax consulting, businesses never have to be concerned that we will try to sell them other services they do not need. And professionals never have to be concerned with us encroaching on their client relationships, because we view you, our fellow professional, as our client.

Compromise to settle the first audit, knowing that by the time the case was assigned to a reviewer, the second audit would be complete as well. The second audit was finalized and closed for about \$20,000 approximately \$190,000 less than the company had anticipated! On top of that, Sales Tax Defense settled the \$230,000 (total from both audits) for \$50,000, to be paid over a 48 month payment plan!

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“You are an amazing speaker and present very very clear and keep it pretty interesting, really nice job.”

**-Howard Mann, Partner, Raich Ende Malter.**

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