

The Two Mysterious Taxes of Commercial Real Estate Leases

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Business owners and operators tend to be well aware of their income tax obligations, which are often taken into consideration when performing due diligence, compliance and budgeting responsibilities. However, many businesses are surprised to learn that certain jurisdictions have an additional tax requirement in connection with their office or retail space leases. In fact, these taxes are rather counterintuitive to the typical application of tax. Normally, a landlord or real estate owner is taxed on the rental income they receive. Yet, these taxes uniquely deviate from that general concept and are instead imposed on the business-lessee. If you lease commercial real estate, continue reading below for information on some mysterious taxes that may impact your company.

New York City Commercial Rent Tax

One of the most overlooked New York taxes is the Commercial Rent Tax (CRT). The tax is imposed at a 6% rate on commercial tenants located from the south side of 96th street all the way down to the southern tip of Manhattan. The CRT is triggered when a lessee's annual rent, or annualized rent in a partial year, is \$250,000 or more. For purposes of the CRT, rent is defined very broadly and includes a host of tenant charges beyond simply the contracted rent, such as utilities and real estate taxes. However, it should be noted that deductions for subleases and certain small

business credits can help reduce or even eliminate the CRT in some instances.

Due to much non-compliance, New York has recently stepped up their audit efforts to a furious pace around the CRT. The taxing authorities are well aware that many taxpayers are not paying CRT and have committed additional resources to enforce compliance. Moreover, New York City business tax returns for both corporations and partnerships now include specific questions verifying a business' rent for CRT purposes and confirming its CRT filing status.

Florida Sales Tax

While the state of Florida may be the place to escape personal income tax, many out-of-state businesses are stunned to learn that their commercial real estate leases in Florida are subject to the sales tax. In other states, sales tax is primarily levied on tangible personal property that one can touch, move and consume. Real property however is not deemed taxable. That is unless the real estate is commercially rented in Florida, in which case it is subject to the state's 5.5% sales tax and potentially additional discretionary county surcharges.

In determining the base rent subject to tax, payments including common area maintenance, parking and janitorial services are taxable. Further, payments made by a tenant on behalf of the landlord are likewise subject to tax, such as real estate taxes and insurance. Subleases are also subject to tax but are creditable to the primary tenant on a pro-rated basis for the sales tax and surtax paid to the landlord on the portion of the space subleased.

Conclusion

It is odd to think that a lessee of real estate would be subject to a tax on their lease payments. However, the New York City CRT and Florida sales tax are just that - oddities. They are the only two taxes imposed on commercial real estate leases and, therefore, are often missed. Failing to comply with these taxes can lead to painful audit examinations causing large tax liabilities and penalty assessments. Thankfully, taxpayers can mitigate their exposure to these outstanding liabilities by taking advantage of voluntary disclosure programs which enable companies to return to

compliance while limiting the extent to which back taxes are collected.

If you have questions regarding your company's tax compliance with respect to its commercial lease or seek more information about applying for voluntary disclosure in connection with these taxes, please contact [**Alan Goldenberg**](#), Principal and Leader of the State and Local Taxation and Tax Controversy groups, or your Anchin Relationship Partner. If you have specific questions about the Florida Sales Tax, please contact [**Kathleen Braica**](#), Florida Office Leader and Partner in the Private Client group.