INTANGIBLE TAX RULES:

Current Through 12-28-18

**CHAPTER 12C-2 INTANGIBLE PERSONAL PROPERTY TAX (Formerly 12B-2)**

**12C-2.001 Definitions.**

The terms “Just Value, Just Valuation, Cash Value, Full Cash Value, Present Cash Value, Market Value, Actual Value and Value” are synonymous. These terms mean the price which the vendor’s interest would bring if offered for sale by one who desires to sell but is not compelled to sell, and bought by one willing to buy but not compelled to buy, with both seeking to maximize their gains and neither being in a position to take advantage of the other.

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(b) FS. History–New 4-17-72, Amended 9-27-76, Formerly 12C-2.01, Amended 11-21-91, 1-28-08.*

**12C-2.002 Property Subject to Tax – Annual and Nonrecurring. (REPEALED)**

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 199.023, 199.032, 199.042, 199.052, 199.057, 199.062, 199.103, 199.133, 199.135, 199.143, 199.145, 199.155, 199.175, 199.183, 199.185, 199.202 FS. History–New 4-17-72, Amended 12-20-73, 11-17-74, Formerly 12C-2.02, Amended 11-21-91, 10-9-01, Repealed 1-28-08.*

**12C-2.003** **Exemptions. (REPEALED)**

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 199.183, 199.185, 213.12(2) FS. History–New 4-17-72, Amended 12-20-73, 11-17-74, 4-21-75, Formerly 12C-2.03, Amended 11-21-91, 10-9-01, Repealed 1-28-08.*

**12C-2.004 Property Subject to Tax – Governmental Leasehold Estates and Nonrecurring.**

(1) Tax on Governmental Leasehold Estates – All leases of government-owned property are subject to an annual tax if rental payments are due as consideration for the lease, unless the lessee serves or performs a governmental, municipal, or public purpose or function as defined in Section 196.012, F.S.

(2)(a) A nonrecurring tax is imposed at the rate of $2.00 per thousand dollars (2 mills) of the value of a note or other obligation for payment of money that is secured by a mortgage, deed of trust, or other lien on Florida real property.

(b) The following are examples of property subject to the nonrecurring tax:

1. Agreements or contracts for deed.

2. Agreements not to encumber real property if the agreement attaches as a lien on the real property.

3. Future Advances – to the extent secured by a lien on Florida real property.

4. Line of Credit – to the extent secured by a lien on Florida real property, as described in Section 199.143, F.S.

(c) Example: Note and mortgage given to secure loan with a principal amount of $1,000,000.

Tax computation:

|  |  |  |
| --- | --- | --- |
|  | Principal | $1,000,000.00 |
|  | Tax rate | x .002\_\_\_\_\_\_\_\_\_\_\_\_  |
|  | Tax due | $2,000.00  |

(3)(a) Where a note, bond or other obligation for the payment of money is secured by realty located both inside and outside of the state and by personal property located both inside and outside of the state, the nonrecurring tax is required to be apportioned based on each type of property’s relative percentage of the principal amount of debt at the time the obligation is created.

(b) Example: Note and mortgage given to secure a loan of $1,000,000. The mortgage includes real property located in and out of Florida as well as personal property located in and out of Florida.

|  |  |  |  |
| --- | --- | --- | --- |
| Security  | Value  | Percentage | Tax  |
| Value of Florida Real Property | $250,000.00 | 25% | $500.00(\*)  |
| Value of NonFlorida Real Property | 250,000.00 | 25% | – 0 –  |
| Total Value of All Real Property | 500,000.00 | 50% | N/A  |
| Value of Florida Personal Property | 250,000.00 | 25% | 0(\*\*)  |
| Value of NonFlorida Personal Property | 250,000.00 | 25% | 0(\*\*)  |
| Total Value of All Personal Property | 500,000.00 | 50% | 0(\*\*)  |
| Total Collateral | $1,000,000.00 | 100% |  |

(\*) Nonrecurring 2 mill tax

(\*\*) There is no tax on personal property.

(4)(a) Where the value of real property pledged to secure an obligation is less than the balance of the obligation, the amount of the obligation secured by the value of Florida real property is subject to the nonrecurring tax.

(b) Example:

|  |  |
| --- | --- |
| Principal Amount of Loan | $1,000,000.00  |
| Less Value of Florida Real PropertyAmount subject to nonrecurring tax |  -500,000.00$ 500,000.00 |

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(a), (b), 199.133, 199.135 (2005), 199.143, 199.145, 199.155, 199.183 FS. History–New 4-17-72, Amended 12-20-73, 5-8-79, Formerly 12C-2.04, Amended 11-21-91, 5-18-93, 10-9-01, 1-28-08, 1-17-13.*

**12C-2.005** **Reporting Requirements – Due Date ‒ Payment of Tax – Discounts Allowed.**

(1) Governmental Leasehold –

(a)1. Every person, regardless of domicile, who leases property from a governmental entity in this state, is required to file a return with the Department. All intangible personal property subject to tax is required to be assessed at its value as of January 1 of each year. The tax is to be reported on a Governmental Leasehold Intangible Personal Property Tax Return (Form DR-601G, incorporated by reference in Rule 12C-2.0115, F.A.C.). The return and the tax are due on or before June 30 of each year.

2. A return, accompanied with tax due, for the current tax year, that is postmarked or delivered to the Department on or before June 30 of the tax year will be considered timely filed. A return that bears a postmark, or is delivered to the Department, after June 30 of the tax year is delinquent. When June 30 falls on a Saturday, Sunday, or legal holiday, returns postmarked or delivered to the Department on the next succeeding workday will be filed timely. For purposes of this rule, a legal holiday means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and s. 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to s. 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

3. The following discounts may be claimed for early payment when the return and payment are postmarked or delivered to the Department on or before the last day of the month of the following periods:

a. 4% during January and February;

b. 3% during March;

c. 2% during April;

d. 1% during May;

e. No discount during June.

4. The postmark date will determine the date of payment for payments mailed to the department. If no postmark is available, the date indicated by the taxpayer on the return signature line or the date of delivery to the Department will be the date of payment.

(b) When the tax due, before discount, is less than $60, no return is required to be filed and no tax is due. Taxpayers who receive a Governmental Leasehold Intangible Personal Property Tax Return (Form DR-601-G) from the Department for which no tax is due may file the return, without payment, to inform the Department that no tax is due. Filing this information return will eliminate additional inquiries from the Department regarding the filing of the return. Taxpayers who are under audit, examination, or investigation by the Department will be required to file a completed return, even if the amount of tax due with the return is less than sixty dollars ($60).

(2) Nonrecurring Tax –

(a) The nonrecurring 2 mill tax on notes, bonds and other obligations for the payment of money which are secured by mortgage, deed of trust or other lien on Florida real property is due and payable at the time the instrument is presented for recordation.

(b) If there is no written instrument, or if the written instrument is not presented for recordation, the nonrecurring tax of 2 mills is due and payable within 30 days following the creation of the obligation.

(c) If a mortgage, deed of trust, or other instrument evidencing a lien subject to the nonrecurring tax secures a revolving line of credit, a line of credit, or future advances, the tax is due, as provided in paragraphs (a) and (b) on the initial debt or obligation, excluding future advances. Thereafter, each time a future advance is made under a future advance mortgage additional nonrecurring tax is due.

(3) Extension of Time for Filing Governmental Leasehold Tax Return –

(a)1. The Department will grant an extension of time of 3 months for filing a return or reporting and paying the tax when it is determined there is reasonable cause for granting the extension. Reasonable cause for the purpose of administering these provisions shall be deemed to be one of the following:

a. Having been granted an extension of time to file federal income taxes. A copy of the extension from the Internal Revenue Service must accompany the request for extension of time; or

b. A tax payment of 100% of last year’s intangible tax or 90% of the current year’s tax accompanies the request for extension; or

c. The records necessary to complete the return are not available due to fire, illness or death of the person having the knowledge to complete the return; or

d. Reasonable cause is established under the provisions of Rule 12-13.007, F.A.C.

2. All requests for extensions of time, for filing returns or reporting and paying the tax, must be filed with the Department on a Governmental Leasehold Intangible Personal Property Tax Application for Extension of Time to File Return (Form DR-602G, incorporated by reference in Rule 12C-2.0115, F.A.C.) and must be received by the Department on or before June 30 of the tax year. The Department will notify taxpayers only if the request is denied.

3. The extension of time covers the period July 1 through September 30. No penalty will be assessed if the return is filed and the tax due is paid on or before September 30 of the tax year. All taxes paid after June 30 of the tax year are subject to interest as provided in Rule 12C-2.007, F.A.C. Interest will be assessed on tax paid after June 30, including those taxes for which an extension of time to file and pay has been granted.

(b) Examples:

1. A taxpayer requested and was granted an extension of time to file a tax return and paid the tax due with the return. The extension was granted through September 30 of the tax year. On September 30 of the tax year, intangible tax in the amount of $100 is paid. No penalties are due because of the approved extension of time to file. However, interest in the amount of $3.00 is due. (See Rule 12C-2.007, F.A.C.)

|  |  |  |
| --- | --- | --- |
|  | Tax Due With Return | $100  |
|  | Penalties | 0  |
|  | Interest |  3 |
|  | Total Due With Return | $103  |

2. A taxpayer is granted an extension of time to file a tax return and pay the tax due with the return. The extension was granted through September 30 of the tax year. On October 1 of the tax year a return is filed and the intangible tax is paid. On October 1, the extension of time to file is void. The taxpayer is liable for all penalties and interest from June 30 of the tax year until the date paid. (See Rule 12C-2.007, F.A.C.)

|  |  |  |
| --- | --- | --- |
|  | Tax Due With Return | $100  |
|  | Penalties: Delinquency (40%)  |  |
|  | Late Filing (40%)  |  |
|  | [Maximum delinquency and late filing Penalty (40%)] | 40 |
|  | Interest |  3  |
|  | Total Due With Return | $143  |

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(b), 199.135 FS. History–New 4-17-72, Amended 12-20-73, 11-17-74, Formerly 12C-2.05, Amended 11-21-91, 10-9-01, 5-4-03, 1-28-08.*

**12C-2.006 Taxable Situs – Reporting Requirements – Who Shall File a Return.**

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.175, 199.202 FS. History–New 4-17-72, Amended 12-20-73, 11-17-74, 9-27-76, 9-6-77, Formerly 12C-2.06, Amended 11-21-91, 1-5-94, 6-2-98, 10-9-01, 5-4-03, Repealed 1-28-08.*

**12C-2.0061** **Transfer of Intangible Personal Property to Certain Out-of-State Entities.**

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History–New 6-2-98, Repealed 1-28-08.*

**12C-2.0062 Management or Control.**

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History–New 6-2-98, Repealed 1-28-08.*

**12C-2.0063** **Intangible Personal Property Held in Trusts.**

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.175 FS. History–New 6-2-98, Amended 10-9-01, Repealed 1-28-08.*

**12C-2.007 Penalties and Interest.**

(1) Delinquent Penalty. A delinquent penalty of 10 percent of the tax due, per month or portion of a month, will accrue on the governmental leasehold estates intangible tax and the nonrecurring intangible tax that is not paid on or before the due date. The delinquent penalty will not exceed 50 percent of the tax due.

(2) Late Filing Penalty. A late filing penalty of 10 percent of the tax due, per month or portion of a month, will accrue on governmental leasehold estates intangible tax returns not filed on or before the due date. The late filing penalty will not exceed 50 percent of the tax due.

(3) The combined penalties provided in subsections (1) and (2) will not exceed 10 percent of the tax due per month, or portion of a month, and is limited to 50 percent of the tax due.

(4) Undervaluation Penalty. Governmental leasehold estate property which has been reported at an amount less than market value is subject to a specific undervaluation penalty of 10 percent of the tax due attributed to the undervaluation.

(5)(a) Interest accrues at the rate of interest established pursuant to Section 213.235, F.S. and Rule 12-3.0015, F.A.C., (prorated daily).

(b) Interest is due based on the amount of tax paid after June 30 of the tax year regardless of any extension of time granted by the Department for paying the tax or filing a return. Interest accrues on the unpaid tax beginning July 1 of the tax year and is calculated through and including the date of payment.

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(b), 199.282, 213.235 FS. History–New 4-17-72, Amended 12-20-73, 9-27-76, 4-2-78, Formerly 12C-2.07, Amended 11-21-91, 5-18-93, 4-2-00, 10-9-01, 5-4-03, 1-28-08.*

**12C-2.008** **Information Reports.**

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 199.052, 199.057, 199.062, 199.185, 607.1622, 733.702 FS. History–New 4-17-72, Amended 12-20-73, 4-21-75, Formerly 12C-2.08, Amended 7-31-90, 11-21-91, 1-5-94, 10-9-01, 5-4-03, Repealed 1-28-08.*

**12C-2.010** **Valuations.**

(1) Leases of Governmental Property.

(a) The value of a lease of governmental property described in subsection 12D-3.003(3), F.A.C., is determined by valuing the lease payments for the remaining term of the lease on January 1 of the tax year, subject to the following provisions:

1. The lease payments to be valued do not include any amount for taxes, interest, insurance, repairs, maintenance, exclusive franchise or concession fees, costs of utilities, or similar charges required to be paid the lessor, and include only the amount paid by the lessee for the use of real or tangible property provided or owned by the governmental lessor, whether designated as a fixed sum, a percentage, or a variable amount.

2. If lease payments are nominal amounts, such as $1 or $10 per year, or the payments are significantly less than a fair market rental for the property, the annual fair market rent which would be paid by the lessee in the open market for comparable property under similar terms and circumstances will be the lease payment to be valued.

3. If payments required by the lease are based on some factor other than the passage of time, such as a percentage of sales or profits, the lease payment to be valued will be based on the average annual rent actually paid by the lessee in prior years, providing the amount so determined is not nominal or significantly less than the fair market rental for the property. The average annual rental used will be determined from the amounts paid by the lessee for a period not to exceed the previous five years. If the average so determined is nominal or is significantly less than fair market value for the property, the lease payment to be discounted will be the annual fair market rental for the property.

4. Otherwise, the annualized lease payment required under the lease is the amount to be valued. The valuation factors to be used are based on the Federal Reserve discount rate – Atlanta – on the last business day of the preceding year, plus one percent. Valuation Factor Tables determined by the Department based on that discount rate, plus one percent, are annually published in a Taxpayer Information Publication and posted to the Department’s Revenue Law Library at www.floridarevenue.com.

5. The period for which the lease payments are to be valued is the number of years remaining under the lease, exclusive of renewal options, as of January 1 of the tax year. The year in which the lease will expire is to be considered a full year for the purpose of this rule.

6. If the final period for which the lease payment is to be valued is less than a year, the lease payment is to be valued using the 1 year value factor and the tax apportioned based on the number of months during the year that the lease is in effect.

(b) Nothing in this paragraph exempts tangible personal property, buildings, or real property improvements owned by the lessee from ad valorem taxation. Such items are not includable in the value of the lessee’s interest in leased governmental property classified as intangible property.

Cross Reference – Chapter 12D-3, F.A.C.

(c) The following examples illustrate the provisions of this paragraph:

1. Lessee makes $4,000.00 annual payments to lessor that includes $1,000.00 tax on a lease with 10 years remaining and the Federal Reserve discount rate – Atlanta – is 11%. The value of the lessee’s interest is determined by discounting the net annual rent of $3,000.00 for 10 years at 12%. This results in a taxable value of $16,950.60.

2. A lessee has 10 years remaining on a percentage lease with an original term of 13 years and the Federal discount rate – Atlanta – is 11%. The lessee has paid $5,000.00 in the first previous year, $6,000.00 in the second previous year and $4,000.00 in the third previous year. The value of the lessee’s interest would be determined by averaging the prior payments of $5,000.00, $6,000.00, and $4,000.00. The lessee’s interest of $5,000.00 would be discounted for 10 years at 12% or $28,251.00.

(2) Nonrecurring Tax.

(a) All obligations for the payment of money, evidenced by note, bond, or deed of trust secured by a written specific lien on real property located in this state are valued at an amount equal to the principal amount of indebtedness at the time of execution.

(b) Agreements for deed constitute intangible property within the classification subject to the nonrecurring tax as a lien in equity on real property. The agreements for deed or contracts for deed are taxable at the principal amount of indebtedness at the time the agreement is executed.

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(b), 199.155 FS. History–New 4-17-72, Amended 12-20-73, 9-27-76, 8-8-78, 12-31-80, Formerly 12C-2.10, Amended 11-21-91, 5-18-93, 10-9-01, 1-28-08, 1-17-13.*

**12C-2.0105** **Tax Credits.**

*Rulemaking Authority 199.202(2), 213.06(1) FS. Law Implemented 199.104, 199.106 FS. History–New 5-18-93, Amended 10-9-01, Repealed 1-28-08.*

**12C-2.011 Administration.**

(1) Nonrecurring Tax – Payments made directly to Department.

Only nonrecurring tax due on obligations or advances made under instruments which have been previously recorded or which are not normally recorded or which are not normally taxed at the time of recording may be paid directly to the Department. This will include, but will not be limited to, tax payments due on an advance made under a future advance clause of a recorded mortgage on real property, advances made under a revolving line of credit secured by a recorded mortgage on real property, or the obligation created under an agreement or contract for deed.

(2) Persons paying the nonrecurring tax directly to the Department are required to file a report using the format described below to report and pay the tax:

(a)1. Include the taxpayer’s name, mailing address, city and state, and the taxpayer’s identification number.

2. Identify the obligation for which tax is being paid, including the following:

a. The name of the obligor;

b. The county in which the real property is located;

c. The official record book and page number of the recording, if any;

d. The parcel number assigned by the county property appraiser or legal description;

e. The amount on which tax is being paid;

f. The date on which obligation or advance was made; and

g. The amount of tax.

(b) Taxpayers must mail these tax payments to the Florida Department of Revenue, 5050 West Tennessee Street, Tallahassee, Florida 32399-0100 or may be presented to a local office of the Department of Revenue.

*Rulemaking Authority 199.135(2), 199.202, 213.06(1) FS. Law Implemented 199.133, 199.135, 199.232, 199.292 FS. History–New 4-17-72, Amended 9-26-77, 10-16-80, Formerly 12C-2.11, Amended 11-21-91, 1-28-08.*

**12C-2.0115 Public Use Forms.**

(1)(a) The following public use forms and instructions are employed by the Department in its dealings with the public related to administration of the intangible tax. These forms are hereby incorporated and made a part of this rule by reference.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s website at www.floridarevenue.com/forms; or, 2) calling the Department at (850)488-6800, Monday through Friday (excluding holidays); or, 3) visiting any local Department of Revenue Service Center; or, 4) writing the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112. Persons with hearing or speech impairments may call the Florida Relay Service at 1(800)955-8770 (Voice) and 1(800)955-8771 (TTY).

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|  | Form Number | Title | Effective Date |
| (2) | DR-601G | Governmental Leasehold Intangible Personal Property Tax Return (R. 01/16) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-06349>) | 01/16 |
| (3) | DR-602G | Governmental Leasehold Intangible Personal Property Tax Application for Extension of Time to File Return (R. 01/16)(<http://www.flrules.org/Gateway/reference.asp?No=Ref-06350>) | 01/16 |

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 119.071(5), 196.199(2), 199.032 (2005), 199.042 (2005), 199.052 (2005),199.103(7) (2005), 199.135 (2005), 199.202, 199.232, 199.282 (2005), 199.292, 213.24(3), 213.37, 215.26 FS. History–New 11-21-91, Amended 1-5-94, 10-9-01, 5-4-03, 9-28-04, 6-28-05, 10-30-06, 1-28-08, 1-27-09, 1-31-10, 2-7-11, 1-29-12, 1-17-13, 5-9-13, 1-20-14, 1-11-16.*

**12C-2.012 Refunds.**

(1)(a) Any person entitled to a refund of intangible personal property taxes may seek a refund by filing an Application for Refund (Form DR-26, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department. Form DR-26 must be in accordance with the timing provisions of Section 215.26(2), F.S., and must meet the requirements of Sections 213.255(2) and (3), F.S. and Rule 12-26.003, F.A.C.

(b) Form DR-26, Application for Refund, must be filed with the Department within three (3) years after the date the tax was paid.

(2)(a) An automatic refund of the amount of overpayment of tax will be granted by the Department when the Department determines upon examination that an overpayment of the tax with the return has occurred, that no additional information is required to determine the correct amount of tax due, and that the overpayment of tax is in accordance with the timing provisions of Section 215.26(2), F.S.

(b) For example, an automatic refund will be granted by the Department when an examination of the return reveals that:

1. The discount pursuant to Section 199.042(2), F.S. (2005), has been understated.

2. The payment made with a Governmental Leasehold Intangible Personal Property Tax Application for Extension of Time to File Return (Form DR-602G, incorporated by reference in Rule 12C-2.0115, F.A.C.) exceeds the amount of tax due when the return is filed; or

3. A mathematical error on the return, such as the use of an incorrect tax rate or other calculation error, results in an overpayment.

*Rulemaking Authority 199.202, 213.06(1) FS. Law Implemented 196.199(2)(b), 199.232, 213.255(2), (3), 215.26(2) FS. History–New 4-17-72, Formerly 12C-2.12, Amended 11-21-91, 5-4-03, 9-28-04, 1-28-08, 5-9-13.*