

The Golden *Ruehl*: The Final Word on the Taxation of Leasehold Improvements in Florida?

February 20, 2012 By [Michael Bowen](#)

On January 3, 2012, the First District Court of Appeals affirmed the trial court's holding that leasehold improvements constructed under two commercial leases were not subject to sales and use tax. *Florida Department of Revenue v. Ruehl No. 925, LLC*, 76 So.3d 389 (Jan. 3, 2012). The appeals court succinctly held that the parties to each of the leases did not "intend for the costs of the leasehold improvements to be part of the total rent charged" and therefore the "costs of the leasehold improvements were not part of the total rent and therefore not subject to tax under section 212.031, Florida Statutes." The Department chose not to appeal the decision to the Florida Supreme Court. It has been a long time coming, but the last word on the taxation of leasehold improvements is likely still yet to be written.

Let's backup. Prior to the trial court's ruling in favor of the taxpayer in *Ruehl*, the Department's longstanding position was that all leasehold improvements constructed under a commercial lease were subject to sales and use tax. In many respects, the Department's position rose to the level of an irrefutable presumption. Support for the Department's stance was found in *Florida Department of Revenue v. Seminole Clubs, Inc.*, 745 So.2d 473 (Nov. 19, 1999). In *Seminole Clubs*, the tenant was given the option to either remit a cash payment of rent or make leasehold improvements to the property of equivalent value. The taxpayer argued that the amounts spent on leasehold improvements were not properly taxable as "rent." On appeal, the Fifth District Court of Appeals held for the Department stating that the constructed leasehold improvements were "in lieu of" rent and properly subject to sales and use tax as rent-in-kind under section 212.031, Florida Statutes.

The factual distinctions between *Seminole Clubs* and *Ruehl* could not have been more obvious. Unlike the clear relationship between the leasehold improvements and the payment of cash rent in *Seminole Clubs*, the value of constructed leasehold improvements in *Ruehl* had no impact on the periodic payments of cash rent due under the two commercial leases. Due in part to this key distinction, both the trial court and the First District Court of Appeals concluded in *Ruehl* that the contracting parties simply

did not intend the amounts spent on leasehold improvements to be "rent" under section 212.031, Florida Statutes.

So, what can we glean from the decision in *Ruehl*? There is both good news and bad news. The bad news is that taxpayers should not blindly rely on the holding *Ruehl*. Simply put, because the holding in *Ruehl* was premised on the intent of the parties, whether or not leasehold improvements are subject to tax under section 212.031, Florida Statutes is based on all attendant facts and circumstances. No taxpayer likes to hear that, but it is the unfortunate reality. Now, the good news. The two commercial leases at issue in *Ruehl* contained boilerplate provisions. In other words, and, again, facts will matter, it would appear that leasehold improvements constructed under most standard commercial leases may avoid sales and use tax under *Ruehl*.

The Empire Strikes Back? At this time, the Department is carefully reviewing its sales and use taxation of leasehold improvements under section 212.031, Florida Statutes. It is likely that the Department will address this issue through the power of the pen. Taxpayers should expect to see a new rule (or an amendment to the existing rule) in the near future. If you paid sales and use tax on leasehold improvements in the last few years, the clock is ticking on your ability to pursue a refund of tax paid. Just make sure to follow the Golden *Ruehl*.

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