



Executive Director
Marshall Stranburg

QUESTION: IS DOCUMENTARY STAMP TAX DUE ON CONTEMPLATED DEEDS THAT WILL TRANSFER UNENCUMBERED FLORIDA REAL PROPERTIES FROM INDIVIDUALS TO AN LLC.

ANSWER: ONLY MINIMUM TAX IS REQUIRED, PROVIDED EACH INDIVIDUAL HOLDS THE SAME PERCENTAGE INTEREST IN THE LLC AFTER THE TRANSFER AS THEY HELD IN THE UNENCUMBERED PROPERTIES PRIOR TO THE TRANSFER OF THE PROPERTIES.

February 11, 2014

Re: Technical Assistance Advise ment No. 14B4-001
Documentary Stamp Tax - Transfer of Florida real property from Individuals to a Limited Liability Company
Sections 201.02(1)(a), 201.0201(3), Florida Statutes (F.S.)
XXX (Taxpayer)
XXX (Individual 1)
XXX (Individual 2)
XXX (Individual 3)

Dear XXX:

This is in response to your request dated XXX, for a Technical Assistance Advise ment (TAA) pursuant to s. 213.22, F.S., and Rule 12-11, Florida Administrative Code (F.A.C.), regarding whether documentary stamp tax is due on proposed deeds that will transfer Florida real properties from three individuals to a limited liability company (LLC). An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

FACTS AS PRESENTED BY PRACTITIONER

In XXX and XXX, Individual 1, Individual 2, and Individual 3, purchased two separate parcels of Florida real property, and each individual held a one-third interest in each parcel. The properties are unencumbered. On XXX, the Taxpayer filed its Articles of Organization with the Department of State, Division of Corporations. Individual 1, Individual 2, and Individual 3 each have a one-third membership interest in the Taxpayer.

The documents presented for examination are as follows:

1. Florida Department of State, Division of Corporations, Information Sheet for the Taxpayer.
2. Articles of Organization of the Taxpayer.
3. Warranty Deed recorded XXX, in Official Records of XXX County Book/Page XXX.
4. XXX County Property Appraiser Information Sheet for the property transferred by the above warranty deed (Parcel A).
5. Warranty Deed recorded XXX, in Official Records of XXX County Book/Page XXX.
6. XXX County Property Appraiser Information Sheet for the property transferred by the above warranty deed (Parcel B).

REQUESTED RULING

You requested that the Department confirm that minimum documentary stamp tax would be due on the proposed deeds that will transfer Parcel A and Parcel B from Individual 1, Individual 2, and Individual 3 to the Taxpayer, because ownership of the properties after the transfers is identical to the ownership of the properties before the transfers.

LAW AND DISCUSSION

Section 201.02(1)(a), F.S., imposes documentary stamp tax on “deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any other person by his or her direction.” The tax rate is 70 cents on each \$100 of the consideration or portion thereof, for the property interest transferred. “For purposes of this section, consideration includes, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed.” Where property other than money is exchanged for interests in real property, there is the presumption that the consideration is equal to the fair market value of the real property interest being transferred.

In Crescent Miami Center, LLC v. Dep't of Revenue, 903 So. 2d 913 (Fla. 2005), the Florida Supreme Court stated that “... the transfer of property between a grantor and its wholly owned grantee, absent any exchange of value, is without consideration or a purchaser and thus not subject to documentary stamp tax in section 201.02(1).”

Section 201.0201(3), F.S., states in pertinent part that the Legislature recognizes that the Supreme Court's opinion in Crescent is limited to the facts of the case and accepts the court's interpretation of s. 201.02, F.S., that no consideration exists when owners of real property unencumbered by a mortgage convey an interest in such property to an artificial entity whose ownership is identical to the ownership of the real property before conveyance. The Legislature expressly rejects any application of the court's interpretation where the facts are not comparable to the facts in Crescent.

DEPARTMENT'S POSITION

As to the requested advisement, minimal documentary stamp tax is due on the proposed deeds, as long as the transferred properties are unencumbered at the time of the transfers, and there will be no other consideration for either or both properties, and provided that Individual 1, Individual 2, and Individual 3 hold the same percentage interest in the Taxpayer after the transfers of the properties as each hold in the properties prior to the transfers of the properties to the Taxpayer.

Please note that effective July 1, 2009, s. 201.02(1)(b), F.S., and rule 12B-4.060, F.A.C., provide that when real property is transferred to an entity and the consideration for the property is less than the property's fair market value, the acquiring entity may become a conduit entity. Documentary stamp tax is due on any transfer of an interest in a conduit entity that occurs within three years of the date the property is acquired by the entity.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related documents are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details, which might lead to identification of the taxpayer, must be deleted before disclosure. In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

Henry Small
Tax Law Specialist
Technical Assistance and Dispute Resolution

HJS/tlf

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