



Executive Director  
Marshall Stranburg

**QUESTION:** IS DOCUMENTARY STAMP TAX DUE ON A PROPOSED DEED THAT WILL TRANSFER UNENCUMBERED FLORIDA REAL PROPERTIES FROM AN LP TO AN LLC?

**ANSWER:** DOCUMENTARY STAMP TAX OF \$XXXXX WILL BE DUE PROVIDED THE LP HOLDS THE SAME PERCENTAGE INTEREST IN THE LLC AFTER THE TRANSFER AS IT HELD IN THE LLC PRIOR TO THE TRANSFER (I.E., THERE WILL BE NO TRANSFER OF A BENEFICIAL INTEREST IN THE PROPERTIES), AND THERE WILL BE NO OTHER CONSIDERATION FOR THE PROPERTIES TRANSFERRED.

**March 27, 2014**

Re: Technical Assistance Advise ment – TAA 14B4-003  
Documentary Stamp Tax - Transfer of real properties from a Limited Partnership to a Limited Liability Company  
Sections 201.02(1)(a), (b) and 201.0201(3), Florida Statutes (F.S.)  
Rules 12B-4.060(1),(2), and (3), Florida Administrative Code (F.A.C.)  
XXXXXX (Taxpayer)  
XXXXXX (LLC1)  
XXXXXX (LLC2)  
XXXXXX (LLC3)

Dear XXXXXX:

This is in response to your request dated XXXXXX, for a Technical Assistance Advise ment (TAA) pursuant to s. 213.22, F.S., and Rule 12-11, F.A.C., regarding the amount of documentary stamp tax due on a proposed deed that will transfer unencumbered Florida real properties between related entities. 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 your letters you state that the properties are to be transferred by a deed from Taxpayer to LLC1. At the time of the transfer, Taxpayer will be the sole owner of LLC1, i.e., there will be no transfer of beneficial ownership in the properties, and the property will be free and clear of any mortgages or other encumbrances. No other consideration will be paid or given for the properties.

You state that following the transfer, 51 percent of Taxpayer's membership interests in LLC1 will be transferred to LLC2 and to LLC3 or LLC3's affiliates (LLC3 Members), which are not related to Taxpayer.

Additionally, following the transfer of the properties and the transfer of the membership interest in LLC1, LLC1 will obtain a loan of up to \$XXXXXX that will be secured by a mortgage on the properties.

You presented the following documents for examination:

1. LLC1 Amended and Restated LLC Operating Agreement.
2. Proposed Special Warranty Deed.
3. Term Sheet.

Additionally, in a phone conversation of XXXXXX, you stated that the \$XXXXXX procured under the loan secured by the mortgage placed on the properties following the transfer to LLC1 will not be given to Taxpayer in exchange for the properties, will not pay off any mortgages that encumbered any of the properties prior to the transfer and will not be used in any other manner as consideration for the properties.

### **REQUESTED RULING**

You requested that the Department confirm that documentary stamp tax would be due on the proposed deed, based on the properties' fair market value multiplied by the percentage of beneficial interest transferred.

### **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 the conveyance. The Legislature expressly rejected any application of the court's interpretation where the facts are not comparable to the facts in Crescent.

A deed that transfers an interest in Florida real property between artificial entities is subject to documentary stamp tax. The tax is due on the total consideration for the property interest transferred. As a result of the Crescent ruling, no documentary stamp tax is due on a deed that transfers unencumbered property where there is no other consideration and there is no resulting transfer of a beneficial interest in the property.

### **DEPARTMENT'S POSITION**

As to the requested advisement, based on the facts presented, documentary stamp tax of \$.70 will be due on the proposed deed, based on the nominal consideration evidenced thereon.

Please note, however, that effective July 1, 2009, s. 201.02(1)(b), F.S., and Rules 12B-4.060(1) and (2), F.A.C., provide that an entity that acquires Florida real property on or after July 2, 2009, from a grantor who owns an interest in the entity, for consideration less than the property's fair market value is a conduit entity. If the grantor of the property transfers a membership interest in the conduit entity within three years of the entity acquiring the property that caused it to become a conduit entity, documentary stamp tax is due on the transfer of the membership interest, based on the consideration attributable to the property. A mortgage encumbering the property at the time of the membership transfer is consideration.

Rule 12B-4.060(3), F.A.C., provides that, where the assets of the conduit entity include property other than the real property that caused the entity to become a conduit entity, tax is calculated by multiplying the consideration for the interest in the conduit entity by the tax rate and then multiplying the result by a fraction, the numerator of which is the value of the real property and denominator of which is the value of all assets owned by the conduit entity.

Based on the facts presented, LLC1 will become a conduit entity on the date the properties are transferred to it. Documentary stamp tax will be due on the subsequent transfer of 51 percent of Taxpayer's interest in LLC1 to LLC2 and LLC3 Members. The tax is due on the consideration paid or given by the LLC2 and LLC3 Members in exchange for the LLC1 interest gained. The \$XXXXXX mortgage obtained by LLC1 to be placed on the properties following the transfer of the membership interest is not consideration for the transfer of the properties or the transfer of the membership interests. However, LLC3 Members will contribute up to \$XXXXXX, and LLC2 will contribute services and/or certain intangibles for the 51 percent interest it is to gain in LLC1. As such, documentary stamp tax will be due on the transfer of the 51 percent interest in LLC1, based on the total consideration (\$XXXXXX and the value of the services and/or intangibles) given by LLC2 and LLC3 Members using the calculation formula provided in the above quoted Rule 12B-4.060(3), F.A.C.

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

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