

SUMMARY

QUESTION: Will documentary stamp tax and intangible tax be due only once in a series of related transaction in which the Accommodator/Intermediary acted as an agent of the Exchanger? Also will documentary stamp tax and intangible tax be due on the mortgage assumption agreement?

ANSWER - Based on Facts Below: Since the terms of the Agreement constitute an agency/principal relationship between the Accommodator and Exchanger, no additional documentary stamp tax or intangible tax will be due on the note or mortgage assumption to place the real property and lien in the name of the exchanger.

October 31, 2006

Re: Technical Assistance Advisement No. 06M-005
Documentary Stamp Tax and Intangible Tax-Reverse 1031 Exchange
Sections 201.02 (1) and 199.133(1), F.S.
Rules 12B-4.014(5) and 12C-2.004(2), F.A.C.
XXX (hereinafter Exchanger)
XXX (hereinafter Accommodator)
XXX (LLC)

Dear:

Your letter requesting a Technical Assistance Advisement has been referred to this office for response. The specific scenario for which advice has been requested is summarized below.

Facts as Presented by Petitioner

The Accommodator took title to the real property in 2005 and executed mortgages on behalf of the Exchanger. The Accommodator was acting as a pass through entity in a Reverse 1031 Exchange of real property under the Internal Revenue Code.

Applicable documentary stamp tax was paid on the deed and the mortgage, and intangible tax was paid on the note and mortgage when Accommodator took title as grantee.

In 2006, the Accommodator conveyed the property to the Exchanger by Warranty Deed, and the parties executed appropriate documents to enable the Exchanger to assume the mortgage previously executed by the Accommodator, which concluded the Reverse 1031 Exchange.

Request for Advisement

You request a confirmation that documentary stamp tax and intangible tax on the note are payable only once in this series of related transactions in which the Accommodator/Intermediary acted as an agent of the Exchanger. Thus, no additional intangible tax or documentary stamp tax is due on the mortgage assumption agreement.

Provisions of Law and Discussion

Section 201.02(1), F.S., imposes the documentary stamp tax on deeds, instruments, or writings conveying, granting, or transferring real property or an interest in real property.

Rule 12B-4.014(5), F.A.C., states that a deed from an agent to its principal conveying real estate purchased with the funds of the principal is not taxable.

The Qualified Exchange Accommodation Arrangements and Exchange Agreement states in part:

WHEREAS Exchanger desires to exchange the Relinquished Property for the Replacement Property in such a way as to qualify for tax-deferred treatment under Internal Revenue Code Section 1031....

WHEREAS Exchange Accommodation Titleholder is willing to assist Exchanger and [LLC] to complete a tax-deferred exchange by acquiring the Replacement Property from Seller through an assignment of Exchanger's rights in and to the Purchase Agreement, and holding the Replacement Property under the conditions specified in this Exchange Agreement;

WHEREAS Exchanger, [LLC] and [Accommodator] intend and agree that [Accommodator] shall hold the Replacement Property for the benefit of the [Exchanger] in order to facilitate an exchange under Internal Revenue Code Section 1031 and Rev. Proc. 2000-37....

WHEREAS [LLC] is willing to act as a qualified intermediary within the meaning of Treasury Regulations s. 1.1031(k)-1(g)(4) and to hold the proceeds from the sale of the Relinquished Property, and to utilize the same in securing, acquiring, and transferring to Exchanger suitable Replacement Property to complete a tax-deferred exchange according to the terms and conditions set forth in this Exchange Agreement.

Section 2.3 of the Agreement also provides:

In order to finance the acquisition of the Replacement Property, Exchange Accommodation Titleholder may enter into financing arrangements (the "Loan") with a third party lender (the "Lender") under terms agreeable to the Lender, Exchange Accommodation Titleholder, and Exchanger....

The Promissory Note for acquisition of the Replacement property was made by the Accommodator and the Exchanger.

Position of the Department

Since the terms of the Agreement constitute an agency/principal relationship for documentary stamp tax and intangible tax purposes, in that the Accommodator originally acquired the property for the benefit of Exchanger, no additional documentary stamp tax or intangibles tax will be applicable on the note or mortgage assumption agreement to place the real property and mortgage lien in the name of the Exchanger.

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 backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the Exchanger. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Celestine Grantham Turner
Senior Tax Specialist
Technical Assistance and Dispute Resolution

CG/mh

Record ID: 23754