



Florida Department of Revenue
Technical Assistance and Dispute Resolution

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Executive Director

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TAX: Documentary Stamp Tax

TAA NUMBER : 18B4- 001

ISSUE : Fair Market Value (FMV) Leases

STATUTE CITES: Section 201.08(l)(a), (b), Florida Statutes

RULE CITES: Rules 12B-4.052(6)(b), 12B-4.053(1), Florida Administrative Code

QUESTION: Whether documentary stamp tax is due on a lease of equipment where the lessee may purchase the equipment at the end of the lease for the Fair Market Value of the equipment.

ANSWER: The Taxpayer provided a copy of the lease agreement that is used for the Fair Market Value end of purchase option. When the purchase price for the equipment at the end of the lease is the fair market value, it is a true lease and not subject to documentary stamp tax.

May 17, 2018

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XXXXXXXXXX

Re: Technical Assistance Advisement 18B4-001
Tax: Documentary Stamp Tax
Issue: Fair Market Value (FMV) Leases
Section 201.08(l)(a), (b), Florida Statutes (F.S.)
Rules 12B-4.052(6)(b), 12B-4.053(1), Florida Administrative Code (F.A.C.)

Dear XXX:

This is in response to your XXX, request for a Technical Assistance Advisement (TAA) pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding Documentary Stamp Tax on FMV Leases. 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

XXX is in the business of leasing tangible personal property to its customers. The Lease Agreement (Agreement) provides different end of lease purchase options: FMV, 10%, or \$1.00. The actual purchase price for the FMV purchase option is not known at the time of the Agreement.

A copy of the Agreement was provided to the Florida Department of Revenue for review.

REQUESTED RULING

You requested the Department determine if documentary stamp tax is due on the Agreement provided for review when the end of lease purchase option is for FMV. You stated that Agreements that have a dollar buyout are considered conditional sale leases, not FMV leases, and are not intended to be included in this TAA.

LAW AND DISCUSSION

Section 201.08(1)(a), F.S., imposes documentary stamp tax on written obligations to pay money, and each renewal thereof, made, executed, delivered, sold, transferred, or assigned in Florida. The tax rate is \$.35 for each \$100 or fraction thereof of the indebtedness or obligation evidenced thereby.

In Florida Department of Revenue v. Winn-Dixie Stores, Inc., 884 So.2d 1100, (Fla. App. 5th DCA 2004), the Court determined that the lessor was obligated to provide the leased equipment to the lessee at the outset of the lease, and the lessor must permit the lessee's quiet enjoyment of the equipment throughout the lease term. The Court held that because of these conditions, the lessee's obligation to pay was conditional, making it a true lease, which is not subject to documentary stamp tax.

DEPARTMENT'S POSITION

The Lease Agreement contains provisions similar to those found in Winn-Dixie Stores. Under the Agreement, the customer returns the equipment to XXX at the end of the lease, or the customer may purchase the equipment at the "end of lease purchase option" price. It bears noting that the "end of lease purchase option" price cannot be less than the fair market value of the equipment at the end of the lease.

As in the case of Winn-Dixie, the Lease Agreement is a true lease, and it is not subject to documentary stamp tax as applied under s. 201.08(1)(a), F.S.

This response constitutes a Technical Assistance Advisement under Section 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 Section 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 Section 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 Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

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