



Florida Department of Revenue
Technical Assistance and Dispute Resolution

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**Effective December 17, 2021, the Department withdraws TAA 18B4-003.
Taxpayers are advised not to rely on this TAA for guidance.**

QUESTION: IS A DEED THAT TRANSFERS FLORIDA REAL PROPERTY FROM A CORPORATION TO A TRUST FORMED UNDER CHAPTER 736, F.S., WHERE THE CORPORATION IS THE SOLE BENEFICIARY OF THE TRUST, SUBJECT TO DOCUMENTARY STAMP TAX.

ANSWER: SINCE THE SUBJECT TRUST IS NOT CREATED UNDER S. 689.071, F.S., THEN S. 201.02(4), F.S., DOES NOT APPLY. THEREFORE, THE DEED IN QUESTION IS NOT EXEMPT FROM TAX.

December 7, 2018

XXXX
XXXX
XXXX

Re: Technical Assistance Advisement No. 18B4-003
Documentary Stamp Tax
Chapter 201, Florida Statutes (F.S.)

Dear XXX:

This is in response to your request dated September 20, 2018, for a Technical Assistance Advisement (TAA) pursuant to s. 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), concerning the imposition of documentary stamp tax on a deed that transfers encumbered Florida real property to a trust created under Chapter 736, F.S. 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

XXXX ("Taxpayer"), owns Florida real property (the "Property") that is encumbered by a mortgage.

Taxpayer has formed a trust (the "Trust") pursuant to Chapter 736, F.S., and Taxpayer is the sole income and principal beneficiary of the Trust. Furthermore, the Trust is revocable by the Taxpayer.

Taxpayer intends to execute a deed (the "Deed") that transfers the Property to the Trust for various business reasons.

REQUESTED RULING

You state that based on numerous conversations with Department representatives, and your interpretation of Rules 12B-4.013(28)(a), and 12B-4.013(28)(i), F.A.C., that the Deed would not be subject to the documentary stamp tax imposed by s. 201.02(1)(a), F.S.

You request the Department's determination as to the applicability of documentary stamp tax on the Deed that transfers the encumbered Property to the Trust.

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 transferred to, or vested in, the purchaser or any other person by his or her direction. In all counties (except Miami-Dade), the rate of tax is \$0.70 per \$100.00 of 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.

Section 201.02(4), F.S., provides that the tax imposed by subsection (1) shall also be payable upon documents which convey or transfer, pursuant to s. 689.071, F.S., any beneficial interest in lands, tenements, or other real property, or any interest therein, even though such interest may be designated as personal property, notwithstanding the provisions of s. 689.071(6), F.S. The tax shall be paid upon execution of any such document.

Section 689.071(2)(c), F.S., provides:

“Land Trust” means any express written agreement or arrangement by which a use, confidence, or trust is declared of any land, or of any charge upon land, under which the title to real property, including, but not limited to, a leasehold or mortgagee interest, is vested in a trustee by a recorded instrument that confers on the trustee the power and authority prescribed in s. 689.073(1), F.S., and under which the trustee has no duties other than the following:

1. The duty to convey, sell, lease, mortgage, or deal with the trust property, or to exercise such other powers concerning the trust property as may be provided in the recorded instrument, in each case as directed by the beneficiaries or by the holder of the power of direction;
2. The duty to sell or dispose of the trust property at the termination of the trust;
3. The duty to perform ministerial and administrative functions delegated to the trustee in the trust agreement or by the beneficiaries or the holder of the power of direction; or
4. The duties required of a trustee under Chapter 721, F.S., if the trust is a timeshare estate trust complying with s. 721.08(2)(c)4., F.S., or a vacation club trust complying with s. 721.53(1)(e), F.S.”

Section 736.0102(3), F.S., provides:

“This code does not apply to any land trust under s. 689.071, F.S. (emphasis added), except to the extent provided in ss. 689.071(7), 721.08(2)(c)4., or 721.53(1)(e), F.S. A trust governed at its creation by this chapter is not a land trust (emphasis added) regardless of any amendment or modification of the trust, any change in the assets held in the trust, or any continuing trust resulting from the distribution or retention in further trust of assets from the trust.”

Rule 12B-4.013(28), F.A.C., provides:

“Trusts Pursuant to Chapter 689, F.S. (emphasis added): A deed to or from a trustee conveying real property is taxable to the extent that the deed transfers the beneficial ownership of the real property and to the extent that there is consideration for the transfer. The following are examples of taxable and exempt conveyances to or from a trustee.”

Rule 12B-4.013(28)(a), F.A.C., provides that a deed from X to a trustee is exempt from the stamp tax to the extent of X’s beneficial ownership interest as a trust beneficiary, whether or not the real property is encumbered by a mortgage. For example, if X owns encumbered or unencumbered real property and conveys it to the trustee of a trust of which X is the sole beneficiary, the conveyance is exempt from the stamp tax.

Rule 12B-4.013(28)(i), F.A.C., provides that a deed to a trustee from a grantor who has the power to revoke the trust instrument, and a deed back to the grantor from the trustee upon revocation of the trust, are not transfers of ownership subject to the stamp tax.

Section 120.536(1), F.S., provides in part that an agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute.

DEPARTMENT'S POSITION

Florida's documentary stamp tax is an excise tax payable on documents that transfer an interest in Florida real property. The tax is based on the consideration exchanged for the property transferred, and consideration includes any mortgages encumbering the property when it is transferred.

Section 201.02(4), F.S., imposes tax on a document that transfers any beneficial interest in Florida real property to a trust created under s. 689.071, F.S. If there is no transfer of beneficial interest, then no tax would be due, regardless of any encumbrances on the property. Chapter 201, F.S., does not speak to trusts formed under Chapter 736.

Rules 12B-4.013(28), 12B-4.013(28)(a), and 12B-4.013(28)(i), F.A.C., were promulgated based on s. 201.02(4), F.S. Pursuant to s. 120.536(1), F.S., these rules do not exist without the statute.

Since the Trust is created under Chapter 736, the tax exemptions provided for under Rule 12B-4.013(28), F.A.C., do not apply, and the Deed transferring the Property to the Trust would not be exempt from documentary stamp tax.

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,

Roger L. Beasley
Tax Law Specialist
Technical Assistance and Dispute Resolution
(850) 717-6488

Record ID: 118624

WITHDRAWN 12-17-2021