Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399 floridarevenue.com

TAX: Documentary Stamp Tax
TAA NUMBER: 20B4-003
ISSUE: Whether documentary stamp tax is due on an Enhanced Life Estate Deed
STATUTE CITE(S): Sections 201.02(1)(a), Florida Statutes

QUESTION: Is an Enhanced Life Estate Deed, also known as a Lady Bird Deed subject to documentary stamp tax?

ANSWER: An Enhanced Life Estate Deed, also known as a Lady Bird Deed, does not transfer any present beneficial interests in real property. In the present case, the Life Tenants retain all rights to the subject properties. The remainderpersons' interests, if any, is contingent upon the death of the Life Tenants. Since there is no present transfer of beneficial interests in the subject properties, the Deed is not subject to documentary stamp tax regardless of any consideration.

October 16, 2020

XXX
XXX
XXX
XXX

Re: Technical Assistance Advisement No. – 20B4-003
Documentary Stamp Tax
Chapter 201, Florida Statutes (F.S.)

Dear XXX:

This is in response to your request dated May 12, 2020, 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 Enhanced Life Estate Deeds, which are commonly referred to as "Lady Bird Deeds". 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

A warranty deed ("Deed") was executed on XXX, by XXX, also known as XXX, and XXX ("Grantors"), and it was recorded XXX, in Clay County OR Book XXX, Page XXX. The Florida real property purportedly transferred by Deed was encumbered by a mortgage for $XXX.

Deed contains language where (the "Life Tenants") reserve and retain "a LIFE ESTATE with full power and authority to grant, sell, convey, reconvey, mortgage, encumber, lease, renounce, divest, transfer, assign, gift, hypothecate or otherwise dispose of the caption property, in fee simple, with or without consideration, without joinder of any Remainderperson, with full power and authority to retain any and all proceeds therefrom, without any liability to any Remainderperson for waste; reserving and retaining full power and authority for the Life Tenant to divest any Remainderperson of their Remainder Interest and to reconvey the Remainder Interest to the Life Tenant, and/or to any successor Remainderperson, with or without consideration, and without joinder of any Remainderperson; and upon the death of the last surviving Life Tenant, the REMAINDER INTEREST, if any…" to the named remainderpersons. Per the Deed, the Remainderperson is the Grantors' daughter.

REQUESTED RULING

You are requesting a ruling as to whether Deed is subject to documentary stamp tax.

LAW AND DISCUSSION

Section 201.02(1)(a), Florida Statutes (F.S.), provides that 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, on each $100.00 of the consideration therefor the tax shall be $0.70 ($0.60 in Miami-Dade County). When the full amount of the consideration for the execution, assignment, transfer, or conveyance is not shown in the face of such deed, instrument, document, or writing, the tax shall be at the rate of $0.70 ($0.60 in Miami-Dade County) for each $100.00 or fractional part thereof of the consideration therefor. 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. If the consideration paid or given in exchange for real property or any interest therein includes property other than money, it is presumed that the consideration is equal to the fair market value of the real property or interest therein.

DEPARTMENT'S POSITION

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

An Enhanced Life Estate Deed, also known as a Lady Bird Deed, does not transfer any present beneficial interests in real property. In the present case, the Life Tenants retain all rights to the subject properties. The remainderpersons' interests, if any, is contingent upon the death of the Life Tenants. Since there is no present transfer of beneficial interests in the subject properties, Deed is not subject to documentary stamp tax regardless of any consideration.

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

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

Record ID: XXX