

of November, 1995.

State of Florida
DEPARTMENT OF REVENUE


I. H. FUCHS
EXECUTIVE DIRECTOR

I HEREBY CERTIFY that the foregoing FINAL ORDER in KENNETH AND TINA BLUME vs. DEPARTMENT OF REVENUE, Case No. 95-1247, has been filed in the official records of the Florida Department of Revenue this 21st day of November, 1995.


JUDY LANGSTON
AGENCY CLERK

Copies furnished to:

Suzanne F. Hood, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.68, Florida

Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Agency Clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate District where the party resides. The Notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KENNETH AND TINA BLUME,)	
)	
Petitioners,)	
)	
vs.)	CASE NO. 95-1247
)	
DEPARTMENT OF REVENUE,)	
)	
Respondent.)	
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RECOMMENDED ORDER

Pursuant to notice, a telephone hearing was held in this case on September 1, 1995. Suzanne F. Hood, Hearing Officer with the Division of Administrative Hearings, presided over the proceeding from her office in Tallahassee, Florida. Petitioners Kenneth and Tina Blume were located in Fayetteville, Arkansas. Counsel and witnesses for Respondent Department of Revenue were located in Tallahassee, Florida.

APPEARANCES

FOR PETITIONERS:	Mr. Kenneth Blume Mrs. Tina Blume <u>Pro Se</u> 159 West 29th Court Fayetteville, Arkansas
FOR RESPONDENT:	Nancy Francillon, Esquire Mark T. Aliff, Esquire Assistant Attorneys General Office of the Attorney General The Capitol, Tax Section Tallahassee, Florida 32399-1050

ISSUE

The issue in this case is whether Respondent Department of Revenue properly assessed additional documentary stamp tax on a quit claim deed transferring encumbered property from

Petitioner Kenneth Blume to Petitioners Kenneth Blume and Tina Blume, as husband and wife.

PRELIMINARY STATEMENT

On June 24, 1992, Petitioners Kenneth and Tina Blume (Petitioners) recorded a quit claim deed at the office of the Clerk of the Circuit Court in and for Santa Rosa County, Florida. Respondent Department of Revenue (Respondent) subsequently assessed Petitioners additional documentary stamp taxes pursuant to Sections 201.01 and 201.02, Florida Statutes (1991), and Rules 12B-4.004 through 12B-4.014, Florida Administrative Code. Petitioners protested the assessment and filed a Petition for administrative hearing on March 7, 1995. Respondent referred the case to the Division of Administrative Hearings for assignment of a Hearing Officer on March 13, 1995.

The undersigned issued a Notice of Telephone Hearing and Order of Instructions scheduling the hearing for August 11, 1995. On August 7, 1995, the parties filed an Agreed Motion to Continue the Final Hearing. The undersigned entered an order rescheduling the hearing for September 1, 1995. The parties filed their Joint Pre-Hearing Stipulation on August 25, 1995. Respondent filed an Amended Exhibit List on August 31, 1995.

During the hearing on September 1, 1995, Petitioner Kenneth Blume testified on behalf of himself and his wife, Petitioner Tina Blume. Petitioners offered one (1) exhibit which was accepted into evidence. Respondent presented the testimony of one (1) witness and offered ten (10) exhibits which were accepted into evidence.

The court reporter filed the hearing transcript on September 20, 1995. On September 29, 1995, the undersigned entered an order granting Petitioners' request for extension of time to file proposed findings of fact. The parties filed their proposed recommended orders on October 9, 1995. The Appendix to this Recommended Order contains specific rulings on each of the parties' proposed findings of fact.

FINDINGS OF FACT

1. Petitioner Kenneth Blume, an unmarried man, purchased real property in his name on December 19, 1988.
2. Petitioner Kenneth Blume obtained a mortgage on the property in his own name with PNC Mortgage Servicing Company.
3. Petitioner Kenneth Blume married Petitioner Tina Blume on November 3, 1990.
4. Thereafter, Petitioner Kenneth Blume contacted a title company, Advance Title, Inc. to refinance the property and transfer the property from himself, as sole owner, to himself and his wife, Petitioner Tina Blume.
5. On June 19, 1992, as part of the refinancing transaction, Petitioner Kenneth Blume transferred his individual mortgage with PNC Mortgage Servicing Company to Foundation Financial Services, Inc. which paid off Petitioner Kenneth Blume's original mortgage.
6. On June 19, 1992, Petitioner Kenneth Blume gave Petitioner Tina Blume a legal interest in the property by transferring half of the encumbered property to her by quit claim

deed. Petitioner Kenneth Blume executed the deed in the presence of Cheryl Scott, a notary public and an employee of Advance Title, Inc.

7. Said deed lists Petitioner Kenneth Blume as grantor and Petitioner Kenneth Blume and his wife, Petitioner Tina Blume, as grantees.

8. On June 19, 1992, as part of the refinancing transaction, Petitioners created a new first mortgage on the subject property in favor of Foundation Financial Services, Inc. This mortgage is the obligation of both Petitioners.

9. The quit claim deed was prepared by Advance Title, Inc. on Petitioners' behalf.

10. The quit claim deed showed that the consideration paid for the transfer of the encumbered property was \$10.

11. On June 24, 1992, Advance Title, Inc. went to the Clerk of the Circuit Court's Office to record the quit claim deed.

12. As a condition precedent to the recordation of any deed transferring an interest in real property, Section 201.022, Florida Statutes, requires that the grantor, grantee, or agent for the grantee, execute and file a return with the Clerk of the Circuit Court. The return is identified as a Form DR-219, Return for Transfer of Interest in Real Property.

13. On June 24, 1992, Advance Title, Inc. filled out and signed the Form DR-219, Return for Transfer of Interest in Real Property, as the agent of Petitioners.

14. Advance Title, Inc., as Petitioners' agent, did not disclose the full amount of consideration on Form DR-219 as required by question 3. Instead, Advance Title, Inc. wrote that the property was sold for \$10.

15. Advance Title, Inc. did not disclose the extinguished or refinanced mortgage on Form DR-219. In response to the question whether the sale was financed, Advanced Title, Inc. did not check the "yes" box on Form DR-219.

16. Form DR-219 defines the word "consideration", in pertinent part, as follows:

the purchase price of the property or the total amount paid or to be paid for the transfer of any interest in real property. Consideration includes: cash; new mortgages placed on the property to finance all or part of the purchase; existing mortgages on the property either assumed or taken subject to; mortgages that are cancelled, satisfied or rendered unenforceable, settled by the sale or transfer or in lieu of foreclosure

This definition is consistent with the Legislature's definition of consideration set forth in Section 201.02(1), Florida Statutes (1991), applicable here.

17. Advance Title, Inc., as Petitioners' agent, stated on Form DR-219 that documentary stamp tax in the amount of \$.60 was due on the subject transfer of interest in real property.

18. On June 24, 1992, Advance Title, Inc. presented the quit claim deed to the Clerk of the Circuit Court for recordation together with the Form DR-219.

19. The Clerk recorded the quit claim deed and collected \$.60 in documentary stamp tax based on information that Advance Title, Inc. provided on the Form DR-219.

20. The Clerk did not tell Advance Title, Inc. or Petitioners that additional documentary stamp taxes were due on the transfer.

21. Respondent conducted a routine audit of the Clerk's records and determined that additional documentary stamp taxes were due on the deed transferring an interest in the encumbered property to Petitioner Tina Blume.

22. The record contains no competent substantial evidence to show that Petitioners fall within an exception to or exemption from paying the additional documentary stamp tax in question here. Moreover, there is no competent persuasive evidence that an agent of the state of Florida or Santa Rosa County misrepresented a material fact on which Petitioners relied to their detriment.

23. Petitioners have not met their burden of proving by a preponderance of the evidence that they do not owe additional documentary stamp taxes on the real estate transaction at issue here.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

25. Section 201.02(1), Florida Statutes, levies a tax on deeds and other instruments relating to real property or interests in real property "prior to recordation." Rule 12B-4.007(2), Florida Administrative Code, requires that all instruments be properly stamped "prior to recordation."

26. Pursuant to Sections 201.02(1) and 201.022, Florida Statutes, the amount of tax levied is related to the amount of actual consideration involved in a real estate transaction.

27. Section 201.02(1), Florida Statutes (1991), defines consideration, in pertinent part, as "the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed (emphasis added)." According to this section, when the amount of consideration for the transfer or conveyance is not shown on the face of the deed, the tax shall be at the rate of \$.60 for each \$100, or fractional part thereof, of the consideration therefor.

28. In the instant case, Petitioner Kenneth Blume transferred a legal interest in the entire mortgaged property to his wife, Petitioner Tina Blume, by virtue of a quit claim deed. The actual amount of taxable consideration, as defined by Section 201.02(1), Florida Statutes, is one-half (1/2) the amount of the mortgage at the time of conveyance.

29. Rule 12B-4.014(2)(d), Florida Administrative Code (1991), states in relevant part, that "[w]here the property is encumbered, tax is based on the mortgage balance in proportion with the interest transferred by the grantor." The tax attaches at the time the deed or other instrument of conveyance is delivered. Rule 12B-4.011(1), Florida Administrative Code (1991).

30. A tax assessment like the one in this case "must be considered prima facie correct, with the burden of showing the

contrary on the party against whom the assessment is made."

Department of Revenue v. Nu-Life Health and Fitness Center, 623 So. 2d 747, 751-752 (Fla. 1st DCA 1992). Petitioners have not met their burden of proving by a preponderance of the evidence that Respondent's assessment was improper.

31. Petitioners did not provide any factual evidence that the Department's assessment was wrong. Instead, Petitioners make various legal and equitable arguments which have no merit.

32. First, Petitioners argue that they are not liable for additional taxes because the transfer was not motivated by consideration. They claim Petitioner Kenneth Blume made the transfer for estate planning purposes. Petitioners assert that the transfer was unnecessary to give Petitioner Tina Blume an interest in property she will own as the wife of Petitioner Kenneth Blume at his death.

33. Petitioners fail to recognize that, by virtue of the quit claim deed and the refinancing of the mortgage, Petitioner Tina Blume now owns a legal interest in the whole of the property with rights of survivorship and shares the economic burden of making payments on the new mortgage.

34. In Department of Revenue v. McCoy Motel, 302 So. 2d 440, 443, the court refused to make a ruling on the legal effect of a hypothetical transaction. In North American Company v. Green, 120 So. 2d 603, 610, the Florida Supreme Court ruled that "we are not privileged to make the taxability of a transaction dependent upon any consideration of some alternative

procedure which might not have been taxable." Similarly, the instant case must be decided based on the property interest actually transferred and not in consideration of possible future property interest.

35. Next, Petitioners argue that Respondent should rescind the transfer and restore the parties to the relative positions they held before executing the quit claim deed for two reasons: (a) Petitioners were unaware and uninformed of the effect of Section 201.02(1), Florida Statutes, at the time of transfer; and (b) enforcement of Section 201.02(1), Florida Statutes, is contrary to the intent of the contract between Petitioners when they agreed to make the transfer in consideration of the sum of \$10.

36. Respondent is charged with the duty of enforcing the taxes levied and imposed by Chapter 210, Florida Statutes. Section 201.11, Florida Statutes. A real estate transaction cannot be rescinded based on one's ignorance of applicable statutes and published rules. Respondent has no authority to reverse the legal effect of a transaction based on the subjective intent of parties to a contract.

37. Petitioners' analogy to consumer protection law and contract law is inapposite here. Respondent's assessment is not controlled by laws that regulate the marketplace. A buyer/seller relationship never existed between Petitioners and Respondent. Advance Title, Inc., not Respondent, is in the business of selling a service or product. Petitioners may have

had a contractual agreement between themselves and with the title company but not with Respondent.

38. Last, Petitioners argue that Respondent should be estopped from collecting the taxes in question because the Clerk of the Circuit Court failed to inform them that additional taxes were due. This argument fails because Petitioners' relied upon a title company to complete and file the Form DR-219 and to prepare and record the quit claim deed. The Clerk merely collected the taxes based on information provided by the title company.

39. In any event, the Clerk's failure to require payment of the proper amount of stamp taxes prior to recordation does not estop Respondent from assessing Petitioners for those taxes.

40. To sustain estoppel against the state, Petitioners must show that:

1. There is a representation as to a material fact that is contrary to a later-asserted position;
2. Reliance on that representation; and
3. A change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon.

State, Department of Revenue v. Anderson, 403 So. 2d 397 (Fla. 1981).

41. The Clerk of the Court is an independently elected constitutional officer. Article VIII, Section 1(d), Florida Constitution. The title company, Advance Title, Inc., is a private company. Regardless of representations, if any, made by

the Clerk or the title company, the Petitioners did not rely to their detriment on any representation made by Respondent which was contrary to a later asserted position. Estoppel simply does not lie in this cause of action.

42. Respondent properly assessed Petitioners for additional documentary stamp taxes.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is recommended that Respondent enter a Final Order upholding its assessments as revised in a Notice of Reconsideration dated January 9, 1995, of documentary stamp tax, plus applicable interest and penalties against Petitioners Kenneth and Tina Blume.

RECOMMENDED this 23rd day of October, 1995, in Tallahassee, Leon County, Florida.

Suzanne F. Hood
SUZANNE F. HOOD, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of October, 1995.

APPENDIX

The following constitutes the undersigned's specific rulings pursuant to Section 120.59(2), Florida Statutes, on all proposed findings of fact submitted by the parties to this case.

Petitioners' Proposed Findings of Fact

Petitioners' proposed recommended order for the most part is a memorandum of law and does not designate proposed findings of fact. However, the undersigned rules as follows on statements of fact contained within Petitioners' memorandum:

1. Accept that Petitioner Kenneth Blume chose to sign the quit claim deed.
2. No competent persuasive evidence regarding the Clerk of the Circuit Court's directions to Advance Title, Inc. or Petitioners. Uncorroborated hearsay evidence.
3. Accept that Petitioners were not aware of Respondent's hotline service at the time of the conveyance; however, irrelevant.
4. Reject that Petitioners made prudent and reasonable attempts to learn the requirements of Section 201.02, Florida Statutes. Petitioners had constructive notice of the published statutes and rules which were in effect at the time of the conveyance.
5. Reject that the "system" deceived Petitioners. No competent persuasive evidence to support this fact.
6. Reject that the "system" or "state" failed to disclose the law controlling taxes on real estate transactions. Applicable statutes and rules read together with the definition of consideration set forth on the Form DR-219 constitute sufficient notice to Petitioners.
7. The "system" or "state" did not draft the language in the quit claim deed; therefore, the state was not required to include any language relating to the cost of the transaction. The Form DR-219 included a definition of consideration which is consistent with the language in the applicable statutes and rules.
8. Reject that the state added new terms or changed the terms of the agreement memorialized in the quit claim deed. The state was not a party to the agreement between Petitioners.
9. Reject that the system failed to inform Petitioners of "all" the terms in the contract as "offered" by the state. Respondent's assessment does not involve a contractual relationship between Respondent and Petitioners with the Respondent as a "seller" and Petitioner Kenneth Blume as a "buyer."

Respondent's Proposed Findings of Fact

The undersigned accepts the substance of Respondent's Proposed Findings of Fact 1-28 as modified in Findings of Fact 1-23 of this Recommended Order.

Copies furnished:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.