SUMMARY

QUESTION: Under the scenario where two individuals who own unencumbered property in equal proportion, and are proposing forming a new Florida limited liability company and transferring such real property from themselves to their newly formed Florida limited liability company, are documentary stamp taxes due on the transfer?

ANSWER: Only minimum documentary stamp taxes would be due on the transfer of the unencumbered property from two individuals to their newly formed Florida limited liability company. Based on the ruling in Kuro v. Department of Revenue, 713 So.2nd 1021, 23 Fl. L. Weekly D1209 (Fla. App. 2 Dist. 1998), if property was owned in the same proportion prior to being transferred into an artificial entity, and after the transfer, the percentage ownership in the limited liability company is the same as the percentage ownership of the property by the individuals, the deed is only subject to minimum tax. As in Kuro, the beneficial ownership remains the same.

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Jul 28, 2003

Re: Technical Assistance Advisement No. 03B4-008
Documentary Stamp Tax - Transfer of Property to a Florida LLC
Section 201.02(1), F.S.
XXX ("Company")
XXX ("Brother 1")
XXX ("Brother 2")
XXX ("Wife")

Dear :

This is in response to your letter dated June 26, 2003, requesting a Technical Assistance Advisement with respect to a documentary stamp tax transfer, and the subsequent tax implications.

FACTS PRESENTED BY THE PETITIONER

For many years, Brother 1 and Brother 2 have owned equally, as tenants in common, 3 unencumbered parcels of real estate located in a county in Florida (collectively, "Properties"). In 1986, Brother 2 conveyed his one-half interest in the Properties to himself and his wife. As a result, Brother 2/Wife, as tenants-by-the-entireties, are equal tenants in common, with Brother 1, of the Properties.

Brother 1 and Brother 2/Wife intend to form a Florida limited liability company ("Company"), with each owning a membership interest equal to 50%. Brother 1 and Brother 2/Wife will own their single, 50% membership interest, as tenants by the entireties. Once Company is formed, Brother 1 and Brother 2/Wife will contribute nominal consideration for their membership interests. Some time after the membership interests have been issued, Brother 1 and Brother 2/Wife will transfer Properties to Company. Each deed will reflect consideration of $10.00. No consideration of any kind (whether in the form of money, tangible property, or additional membership interests in Company) will be given by the Company to Brother 1 or Brother 2/Wife in exchange for Properties, nor will any consideration of any kind be exchanged between Brother 1 and Brother 2/Wife for the transfer of Properties to Company. Once the transfer of Properties is complete, Company will own 100% fee simple title in the Properties (which will be unencumbered), and Brother 1 and Brother 2/Wife will each own a 50% membership interest in Company. The resulting ownership in Company _ 50% -will be identical to the pre-transfer ownership interest of Brother 1 and Brother 2/Wife in Properties. The resulting transfer will have no effect on the net worth of Brother 1 or Brother 2/Wife. Brother 1 and Brother2/Wife intend to retain their membership interests in Company and to continue to hold Properties in Company for management purposes.

REQUESTED RULING

The relevant parties to the transaction request a ruling, based on the facts, that the transfer of the Properties is not subject to Florida documentary stamp tax or any documentary stamp tax surtax, other than the minimum tax imposed under Chapter 201, F.S.

LAW AND DISCUSSION

Section 201.02, F.S. (2001) provides as follows:

> 201.02 Tax on deeds and other instruments relating to real property or interests in real property.--
>
> (1) 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 of the consideration therefor the tax shall be 70 cents. 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 70 cents for each $100 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.

In the case of Kuro, Inc. v. Department of Revenue, 713 So.2nd 1021 (Fla. 2nd DCA 1998), the court ruled there was no consideration for the transfer of unencumbered real estate from a father and son to their solely owned corporation, as the beneficial interest in the property remained the same. The court decided that the deed was only subject to minimal documentary stamp tax.

DETERMINATION

In light of the ruling in Kuro, the deed effecting the described transfer of Properties from Brother 1 and Brother 2/Wife will only be subject to minimum 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 from that which is expressed in this response.

You are further advised that this response, your request and related backup 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 taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Joy B. Eldred, CPA
Tax Law Specialist
Technical Assistance and Dispute Resolution
Office of the General Counsel

JE/mh