

## SUMMARY

Question: When should the documentary stamp on a deed be paid when the deed is part of a s. 1031, IRC exchange? Should the tax on the deed be when the deed is given to the EAT or when the deed is given by the EAT to the purchaser?

Response: Documentary Stamp Tax is not required to be paid on the deed transferring the Exchangor's interest in the real property to the EAT. Documentary Stamp Tax should be paid when title is transferred by the EAT to the ultimate purchaser

October 24, 2008

Re: Technical Assistance Advisement No. 08B4-007

Documentary Stamp Tax – 1031 Exchange  
Section 201.02 (1), F.S.  
Rule 12B-4.014 (5), F.A.C.

XXX (hereafter Exchange Accommodation Titleholder or EAT)  
XXX (hereafter Exchangor)  
XXX (hereafter Trustees)  
XXX (hereafter LLC)

Dear:

Your letter of February 22, 2008, requesting a Technical Assistance Advisement has been referred to this office for response. The specific scenario for which advice has been requested is summarized below.

### **Facts Presented by the Petitioner**

The Trustees hold a 50% title to Florida real property (“Deed A”). An unrelated trust not part of the 1031 reverse exchange holds title to the remaining 50% of the Florida real property. Exchange Accommodation Titleholder (“EAT”) accommodated a reverse 1031 exchange under the Internal Revenue Code for Trustees of the Exchangor. The Trustees conveyed their 50% title in Deed A to a single member limited liability company (“LLC”) that was formed to accommodate the reverse exchange. EAT is the sole member of the LLC. The Trustees then acquired a “like-kind” replacement property (“Deed B”). Documentary stamps were paid on Deed B. 100 % of the title to Deed A was transferred to the ultimate purchaser by the EAT and the unrelated trust.

At the time the Exchangor's 50% interest was transferred to the EAT, documentary stamp tax was paid on 50% of the value of the real property. When title was transferred to the ultimate

purchaser by the EAT and the unrelated trust, documentary stamp tax was paid on the unrelated trust's 50% of the value of the property.

### **Requested Ruling**

You asked when documentary stamp taxes are paid on the transfer from the Exchangor to the EAT, instead of the transfer from the EAT to the ultimate buyer of the property, whether documentary stamp taxes need to be paid again on the transfer of the Exchangor's 50% interest to the ultimate purchaser.

### **Law and Discussion**

Section 201.02(1), F.S., imposes a documentary stamp tax on deeds, instruments, or writings that convey, grant, or transfer real property or an interest in real property.

Rule 12B-4.014(5), F.A.C., states that a deed from an agent to his principal conveying real estate purchased with the funds of the principal is not taxable.

Based on the facts given in the request, and the requirements of s. 1031, IRC, as amended, an agent/principal relationship existed between the Exchangor and the EAT. For purposes of documentary stamp taxes, only the deed to the ultimate purchaser is taxable.

According to the information provided by the taxpayer, the documentary stamp tax was paid on the Exchangor's 50% interest in the real property when it was transferred to the EAT. However, in 1031 reverse exchanges the Exchangor's deed to the EAT is an agent/principal transfer and would not be subject to documentary stamp tax. For documentary stamp tax purposes, the taxable deed in the 1031 reverse exchange is the deed given by the EAT to the ultimate purchaser.

### **Department's Position**

Based upon the information and documents provided by the taxpayer, the terms of the Qualified Exchange Accommodation Agreement establish an agent/principal relationship for documentary stamp tax and surtax purposes between the Exchangor and the EAT. Documentary stamp tax was not required to be paid on the deed transferring the Exchangor's 50% interest in the real property to the EAT. Documentary stamp tax should have been paid when title was transferred by the EAT and the unrelated trust to ultimate purchaser. However, since the tax was paid on the deed to the EAT, the Department will not require a second payment of documentary stamp tax on the portion of the deed from the EAT, transferring the Exchangor's 50% interest in the real property to the ultimate purchaser. Based upon the documents provided, the payment on the deed transferring the Exchangor's 50% interest in the real property to the EAT, plus the payment

of documentary stamp tax on the deed transferring the unrelated trust's 50% interest in the real

property to the ultimate purchaser reflect total tax due has been paid on this transfer of real property.

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 backup documents 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,

J.V. Parramore, Jr.  
Revenue Program Administrator  
Technical Assistance and Dispute Resolution

JVP/mh

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