



TAX: Documentary Stamp Tax

TAA NUMBER: 11B4-003

ISSUE: Loan and Credit Products

STATUTE CITE(S): Sections 201.08(1)(b), (5), (6), F.S.

RULE CITE(S): Rules 12B-4.053(1), 12B-4.054(7), F.A.C.

QUESTION: With respect to a revolving line of credit loan made by a bank to its customers, will documentary stamp tax be due on a document containing a borrower's promise to pay which is initially signed by a lender in Florida, and subsequently signed and executed by the borrower and delivered to the lender outside of Florida? If the terms of the document are modified by the use of a letter sent by the lender to the borrower for the purpose of extending the maturity date of the loan and the document is not signed by either the lender or the borrower, is the document taxable as a renewal?

ANSWER: Documentary stamp tax as imposed under paragraph 201.08(1)(a), F.S., is due on any instrument executed, signed, or delivered in Florida that contains an unconditional written obligation to pay money. The taxability of a document is determined solely from the face of the document and any separate document expressly incorporated into the document. Since no document will be signed in Florida that unconditionally obligates the borrower or the lender to the payment or repayment of money, and none of the documents incorporate any other documents, no documentary stamp tax is due.

January 28, 2011

XXX

XXX

XXX

Re: Technical Assistance Advisement No. 11B4-003

Documentary Stamp Tax

Promissory Note, Confirmation Letter, and Extension Notice

Section 201.08(1), (5), (6), F.S., Rules 12B-4.053(1), 12B-4.054(7), F.A.C.

XXX (the "Taxpayer")

Dear XXX:

This is in response to your letter dated XXX, requesting a determination regarding the imposition of documentary stamp tax on revolving lines of credit provided by the Taxpayer to its customers. This response constitutes a Technical Assistance Advisement under Chapter 12-11, Florida Administrative Code (F.A.C.), and is issued to you under the authority of Section 213.22, Florida Statutes (F.S.).

FACTS AS PRESENTED BY PRACTITIONER

The Taxpayer transacts and conducts banking business both within and outside Florida, through separate locations. Among the many business activities conducted by the Taxpayer, the Taxpayer makes revolving line of credit loans to its customers that may be unsecured or secured by a security interest in personal property. The following documents attached to this request used in connection with the loans are described as follows:

Exhibit “A” - XXX (the “Disclosure”)

Exhibit “B” - XXX (the “Confirmation Letter”)

Exhibit “C” - XXX (the “Extension Notice”)

As set forth, for purposes of the request, the following facts are presumed:

1. The Taxpayer makes a revolving line of credit loan to a customer (the “Borrower”) for \$XXX. In connection with the making of the loan, the Taxpayer provides the Borrower with the Disclosure. The Disclosure is not signed by the Borrower or the Taxpayer. In addition, the Taxpayer, acting through a duly authorized representative located in Florida, signs a Confirmation Letter (which contains the Borrower’s promise to pay the amount of the loan) and provides it to the Borrower, who then takes the Confirmation Letter to a location outside Florida. Once outside Florida, the Borrower signs the Confirmation Letter and sends it to a facility owned by the Taxpayer, also located outside Florida, where a duly authorized representative of the Taxpayer accepts delivery of the Confirmation Letter. Appropriate affidavits of out-of-state execution and delivery meeting the requirements of Rule 12B-4.054(34)(a), F.A.C., are obtained in connection with the signing of the Confirmation Letter. The Borrower’s obligations under the Confirmation Letter are:
 - (a) Not secured by a mortgage on Florida real property;
 - (b) Secured by a security interest in the Borrower’s accounts maintained at the location of the Taxpayer; or
 - (c) May also be secured by a lien on other personal property of the Borrower, to be described in the Confirmation Letter.

In no instance will a security agreement be recorded in Florida evidencing any of the Borrower’s liens; however, a UCC-1 Financing Statement may be filed with the Department of State noting the Taxpayer’s security interest in certain personal property of the Borrower.

2. Shortly before the Borrower’s loan reaches its maturity date as dictated in the Confirmation Letter, the Taxpayer decides to extend such maturity date, which it has the option to do pursuant to the provisions of the Confirmation Letter. (XXX). In connection with this extension, the Taxpayer mails to the Borrower located in Florida an Extension Notice, which is not signed by either the Taxpayer or the Borrower.

REQUESTED ADVISEMENT

Taxpayer requests a ruling whether documentary stamp taxes are due and payable upon the Confirmation Letter at the time of its execution and delivery to the Taxpayer. Taxpayer also requests a ruling whether the Confirmation Letter or the Extension Letter would incur any documentary stamp tax by reason of the issuance of the Extension Notice by the Taxpayer to the Borrower.

LAW AND DISCUSSION

Section 201.08, F.S., provides in pertinent part:

(1)(a) On promissory notes, nonnegotiable notes, and other written obligations to pay money ... made, executed, delivered, sold, transferred or assigned in this state, and for each renewal of the same, the tax shall be 35 cents on each \$100 or fraction thereof of the indebtedness or obligation evidenced thereby. The tax on any obligation described in this paragraph may not exceed \$2,450.

(5) For purposes of this section, a renewal shall only include modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms....

Rule 12B-4.053(1), F.A.C., provides that the tax is on the “Promise to Pay” and each renewal thereof, and to be a “note or other obligation” it must be signed by the maker or obligor to be taxable. A note or written obligation to pay money that is not signed by the maker or obligor is not taxable pursuant to the provisions of Rule 12B-4.054(7), F.A.C.

POSITION OF THE DEPARTMENT

In the transaction presented, the Confirmation Letter evidencing the Borrower’s promise to pay is initially signed by the Taxpayer in Florida. However, the signature of the Taxpayer only commits it to the lending of money and not to the payment or repayment of money. Because the Confirmation Letter will be signed and executed by the Borrower and delivered to the Taxpayer outside Florida, it is not subject to the Florida documentary stamp tax (all appropriate affidavits were obtained at that time). The Extension Notice is a renewal, since it effectively modifies the terms of the Confirmation Letter by extending the maturity date of the loan made by the Taxpayer to the Borrower. However, the Extension Notice does not meet the parameters set forth in Rule 12B-4.053(1) or Rule 12B-4.054(7), F.A.C., since it is not signed in Florida. The Extension Notice is also not expressly incorporated into or with another document that, when considered together, would result in an unconditional obligation to pay a sum certain in money signed in Florida (see s. 201.08(6), F.S.). Therefore, the Extension Notice itself is not subject to the Florida documentary stamp tax. Additionally, the issuance of the Extension Notice by the Taxpayer to the Borrower does not render the Confirmation Letter subject to documentary stamp tax, since neither the Extension Notice nor the Confirmation Letter is signed by the Borrower in Florida.

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,

Joy B. Eldred, C.P.A.
Tax Law Specialist
Technical Assistance and Dispute Resolution

JBE/tg

Record ID: 91748