

Status: Law amended see Ch. 90-132, L.O.F., effective 7/1/90;
s. 201.02 F.S. and Rule 12B-4.013(10), F.A.C.
effective 2/13/91

Oct 10, 1984

Re: Technical Assistance Advisement #84(B)4-007

Documentary Stamp Tax

Assignment of Lease to Partnership

Dear :

This is in response to your request for a Technical Assistance Advisement based on the following information:

"The facts of the transaction are as follows:

"1. XXX a Florida general partnership, owns a leasehold interest in a piece of improved real property located in XXX, Florida known as the XXX. This leasehold interest is encumbered by certain existing mortgages in the approximate amount of XXX.

"2. The leasehold estate owned by XX will be transferred, subject to the existing mortgages, to a Florida general partner composed ship to be known as XXX; composed of (1) XXX owning approximately XXX, interest and (2) XXX (called 'XXX' herein) owning approximately a .2% interest in the general partnership.

"3. After the leasehold estate is transferred to XXX the partnership will further encumber the leasehold estate and interests of the partnership with second mortgage loans in the approximate amount of XXX. The second mortgage loans will be made by XXX is not the first mortgage lender.

"4. After the leasehold estate is transferred to XXX, and second mortgages are placed upon the interests of XXX a separate already existing non-Florida partnership will acquire approximately a XXX interest in XXX.

"5. In the transfer into the partnership of the leasehold estate XXX does not assume the payment of the mortgage on the leasehold estate. The ownership of the real estate

that is subject to the leasehold remains with the owner."

Rule 12B-4.13(27), F.A.C., provides:

"12B-4.13 Conveyances Subject to Tax.

"(27) Assignment of Lease or other Conveyance of Leasehold

Interest in Realty: All assignments of leases or other conveyances of leasehold interests in real property for a present consideration are taxable under Section 201.02, Florida Statutes, based upon the total consideration, which includes any mortgage assumed by the assignee. However, any mortgage which is not assumed, does not constitute taxable consideration even though paid by the assignee.

(Attorney General Opinion 074-350, November 13, 1974, 1974 Annual Report of Attorney General, Page 578); Department of Revenue v. Dix, 362 So.2d 420 (1st DCA Fl. 1978), Cert. Den. April 11, 1979."

Further, Rule 12B-4.13(10), F.A.C., provides in part:

"(10) Partnerships: A conveyance of realty by a partner in exchange for an interest in a partnership is taxable or not depending upon the circumstances:

"(a) The tax is computed on the value of the interest in the partnership received by the grantor plus any other consideration.

"(c) When the owner of property forms a general partnership with other parties and he conveys the property to the partnership subject to a mortgage for which the partnership assumes the burden of making the mortgage payments, the conveyance to the partnership is taxable under Chapter 201, F.S. The tax should be computed upon the unpaid balance of the mortgage debt at the time of the conveyance, plus any other consideration, including the value of the interest in the partnership received by the grantor, less the portion of the unpaid balance represented by the percentage of interest which the grantor acquires in the partnership."

Therefore, the transfer of the leasehold interest in the property from XXX to XXX general partnership is taxable for only the minimum Florida documentary stamp tax of \$.45. This is

based on the fact that the leasehold mortgage was not assumed and no other consideration was given for the exchange.

Further, the acquisition of a XXX interest in the partnership constitutes the sale of personal property and is, therefore, not subject to the Florida 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 than expressed in this response.

You are further advised that this response and your request 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 by the department before disclosure. In an effort to protect confidential information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Sincerely,

James E. Silvey
Technical Assistant

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