

Jun 22, 1989

Re: Technical Assistance Advisement No. 89(B)4-004
Documentary Stamp Tax; Revolving Credit Agreements
XXX (hereinafter Lender)
XXX (hereinafter Associate Lender)

Dear

This is in response to your request for a Technical Assistance Advisement concerning tax under Chapter 201, Florida Statutes, as it applies to the revolving line of credit documents used by Lender and Associate Lender for the purpose of making loans to their customers.

The documents included with your request for our determination are:

1. XXX Line of Credit Revolving Credit Agreement, (hereinafter Exhibit A), and
2. XXX Line of Credit under \$25,000 One Year Term Revolving Credit Agreement, (hereinafter Exhibit B), and
3. XXX Line of Credit \$25,000 and over Revolving Credit Agreement, (hereinafter Exhibit C), and
4. XXX Revolving Credit Agreement Request, (hereinafter Exhibit D)

Your letter of request states that although the foregoing agreements refer to Lender, it is proposed that Associate Lender will also use these forms only by modifying for use by Associate Lender its name and address. Further, amounts borrowed under these lines of credit will not be secured by real property, and no promissory notes or mortgages will be filed or recorded in connection with any of the revolving credit agreements. Loans made under Exhibit A, Exhibit B, and Exhibit C, are requested by checks which you state do not contain a promise to pay the loan requested. No other documentation is executed with regard to these loans. Loans made in connection with Exhibit D are requested by a draw request which you enclosed and which does

not contain a promise to pay the loan requested. No other documentation is executed with regard to these loans.

Under Term/Repaying the Loans, Exhibit A, which is signed by the borrower, provides that:

"Our agreement to make loans to you under this XXX Line of Credit shall terminate 12 months after the date of this Agreement; unless we sooner terminate our agreement to make such loans, which we may do at any time in our sole discretion without notice to you; or unless this Agreement is renewed by you and us. You agree to repay the entire outstanding principal balance of loans hereunder, together with accrued Finance Charges, service charges, late charges and all other amounts payable by you under this Agreement, immediately upon our demand, which we may make at any time in our sole discretion."

Under Termination/Repaying the Loans, Exhibit B, which is signed by the borrower, provides that:

"Unless repayment is sooner required because of an Event of Default hereunder, your right not to repay outstanding principal hereunder shall terminate 12 months from the date of this agreement. Commencing 13 months after the date of this agreement, you agree to pay your Line of Credit Loans, but you may pay them installments. You will receive monthly statements that will show when each installment is due. Each installment will be 1/24th the outstanding principal balance in your account as of the date of the last borrowing, plus finance charges as described below, calculated on the outstanding principal balance. We will apply your payments to: (1) late charges, if any (2) any other charges due hereunder (3) finance charges due hereunder and outstanding principal in that order."

Under Repaying the Loans, Exhibit C, which is signed by the borrower, provides that:

"Unless this Agreement is renewed or repayment is sooner required because of an Event of Default hereunder,

commencing 13 months after the date of this agreement of 13 months after the date of any subsequent renewal of this agreement, you agree to pay your XXX Line of Credit loans, but you may pay them in installments. You will receive monthly statements that will show when each installment is due. Each installment will be 1/24th the outstanding principal balance in your account as of the date of the last borrowing, plus finance charges as described below, calculated on the outstanding principal balance. We will apply your payments to: (1) late charges, if any, and (2) any other charges due hereunder (3) finance charges due hereunder and outstanding principal in that order."

Under Loans, paragraph 1.1 of Exhibit D, which is signed by the borrower, provides in part that:

"1.1 Amount. [Lender] agrees, on the terms and subject to the conditions of this Agreement, to make loans (hereinafter referred to as, individually, a "Loan" and, collectively, the "Loans") to the company at the office of [Lender] above specified in an aggregate principal amount at any time outstanding up to but not exceeding XXX Dollars (\$XX). Within such limit, the Company may borrow, repay, and re-borrow at any time or from time to time from the date hereof to and including XXX 19XX or the termination of the commitment of [Lender] pursuant to Section II hereof, whichever is earlier...."

Under Repayment of Principal, paragraph 5 of Exhibit D states in part that:

"5 ... the Company shall repay the aggregate unpaid principal amount of all loans... outstanding on the termination date in XXX equal consecutive installments payable on the XXX day of each XXX, commencing 19XX,... provided that the last such installment shall be in the amount necessary to repay in full the then unpaid principal amount of the loans and then unpaid interest accrued hereunder...."

The documentary stamp tax at issue here is a tax on documents, that is to say an excise tax. See Choctawhatchee Electric Cooperative, Inc., v. Green 132 So.2d 556 (Fla. 1961).

More particularly, the tax relates to a "promise to pay" as described in Rule 12B-4.051 (1), F.A.C., which mirrors the language of s. 201.08, Florida Statutes.

Under Section 201.08, Florida Statutes, the tax on notes and other written obligations to pay money is a tax on the promise to pay, and is measured by the amount promised. The liability to pay the tax and its amount are determined by the form and face of the instrument. Metropolis Pub. Co. v. Lee (1936) 126 Fla. 107, 170 So. 442; Bankers Trust Co. v. Florida E.C.R. Co. (1934 DC Fla.) 8 F Supp 874, affd (CA 5 Fla.) 78 F 2d 425, cert den 296 US 637, 80 L Ed 453, 56 LS Ct 170; Rule 12B-4.052 (6), F.A.C. Extrinsic facts are not to be considered. Metropolis Pub. Co. v. Lee, *supra*; Choctawhatchee Electric Cooperative, Inc. v. Green, *Supra*; Rule 12B-4.002 (1),(b) and 12B-4.052 (6 F, F.A.C.

Department's Position

There is no essential wording in any of the aforesaid credit agreements to impose the tax under the provisions of Section 201.08, Florida Statutes, as a direct obligation to pay money. There is no fixed debt, accordingly it would be impossible to determine how many stamps should be placed on these agreements. Consequently, these credit agreements would not be subject to documentary stamp tax. This advisement is issued only with respect to the documents herein named and does not extend to other documents executed in connection herewith, or subsequent documents that modify or renew any loans made under these agreements.

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,

W.E. Webb
Technical Assistant
Statutory Compliance Section

WEW/mh