

Feb 17, 1993

Re: Technical Assistance Advisement No. 93(B)4-002

Documentary Stamp Tax; Mobile Home Parks

XXX (hereinafter Taxpayer)

Dear :

Taxpayer, a Florida cooperative mobile home owners association, has requested a technical assistance advisement concerning tax under s. 201.02, F.S., applicable to the following issue:

Does Florida Administrative Code Rule 12B-4.014 (5), exempt from tax proprietary leases of mobile home sites from Taxpayer to its original subscribing members who furnished the funds for Taxpayer to acquire such property?

Background

Taxpayer is a corporation formed pursuant to the provisions of Chapter 723, F.S. This organization is formed pursuant to contractual arrangements including a subscription agreement between individuals and Taxpayer to establish a mobile home park cooperative and for the issuance of certificates and proprietary leases on individual lots in the mobile home cooperative. The cooperative is created on an existing mobile home park. The right to subscribe is not offered to anyone other than the person owning the mobile home sitting on the cooperative unit until after the park is acquired. Approximately 60% of existing tenants that own mobile homes within the park subscribe by the day the purchase of the mobile home park is completed.

Pursuant to the contractual arrangements between the parties, the purchaser of a proprietary lease interest in the mobile home cooperative places funds in escrow which are to be used to acquire the mobile home park by Taxpayer, which will be made the subject of the proprietary lease. In the event closing of the purchase of the mobile home park is not accomplished the

escrow is refunded to the subscriber.

Paragraph 3 of a document entitled "Subscription Agreement For Membership Certificate And, Upon Conversion, A Proprietary Lease" (the Agreement) which is executed between Taxpayer, as seller, and individuals owning mobile homes in the "park", as purchasers reads:

(Deleted)

Paragraph 4 of the Agreement states that:

(Deleted)

Additionally Paragraph 8 of the Agreement provides that:

(Deleted)

Discussion And Law

Section 201.02 (2), F.S., as amended by s. 9, Chapter 92-32, L.O.F., now levies the same rate of tax prescribed by s. 201.02 (1), F.S., on documents by which the right to occupy any dwelling situated on real property that is owned by any form of cooperative association as defined in s. 719.103, F.S. Also see Fla. Admin. Code Rule 12B-4.013(26)(c).

Florida Admin. Code Rule 12B-4.014(5), exempts tax on a deed from an agent to his principal conveying real property purchased for and with the funds of the principal. A corporation may act as agent for an individual. Patek v. Associated Ins. Underwriters Inc., 160 So.2d 721 (3 DCA, 1964).

A resulting trust arises when one party pays the consideration for the purchase of property but title is taken in the name of another. Department of Revenue v. Zuckerman-Vernon Corp., 354 So.2d 353 (Fla. 1977). In Womack v. Madison Drug Co., 155 Fla. 335, 20 So.2d 256 (1944), the court determined that a resulting trust "must arise, if at all, at the instant legal title vests and the alleged beneficiary must have paid the purchase price or bound himself by an absolute obligation to pay

it."

Department's Position

The Agreement supports that Taxpayer is agent for original subscriber for the purpose of purchasing the "park" property. Further, the Agreement establishes that principals shall have either paid Taxpayer their pro-rata share of the purchase price or have an absolute obligation to pay it. Therefore, only minimal 70 cents documentary stamp tax would be due on proprietary leases from Taxpayer to only those persons subscribing prior to the purchase of the "park" by Taxpayer, provided proper tax was paid when Taxpayer acquired the "park" 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 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 the confidentiality of such information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or the response.

Sincerely,

W.E. Webb
Technical Assistant
Technical Assistance

WEW/mh