

Apr 01, 1996

Re: Technical Assistance Advise ment No. 96(B)4-004  
Documentary Stamp Tax; Cross-Collateralization Agreement  
XXX (Lender)  
XXX (Corporation 1)  
XXX (Corporation 2)  
XXX (Corporation 3)

Dear :

This is in response to your letter of February 7, 1996 requesting technical assistance regarding the liability for documentary stamp tax on a cross-collateralization agreement.

### Facts

Corporation 1 owns a parcel of land in XXX County, Florida. In XXX, Lender made an aggregate loan of \$XX to three corporations secured by a mortgage on the real property by Corporation 1. Documentary stamp taxes were paid on the principal amount.

In XXX, Lender loaned Corporation 2, \$XX and received a mortgage on property owned by the borrower. Documentary stamp taxes were paid on the principal amount.

Also in XXX, Lender made a loan to Corporation 3 in the amount of \$XX secured by an additional lien on the property owned by Corporation 1. This loan was to guarantee standby letters of credit. Documentary stamp taxes were paid on the principal amount.

In connection with XXX transaction, Corporation 1 and Corporation 2 executed a Cross-Collateralization Agreement. The Agreement provides, inter alia, that a default in one of the loans is a default in all of the loans described above. There is no other obligation by Corporation 1 or by any other party to the Agreement to pay any amount in excess of their respective

original notes.

The Agreement does not alter, modify, amend or extend any of the underlying obligations of the original notes and mortgages. The Agreement does not increase the principal amount of the original notes and mortgages nor assume any additional liability.

Since the Agreement is conditioned solely upon the default of any one of the borrowers, you are under the impression that it should not be subject to documentary stamp tax under s. 201.08, F.S. An escrow was established at the Lender for the amount of the tax in question pending clarification of whether the Agreement is subject to documentary stamp tax.

### **Law and Discussion**

Florida Administrative Code Rule 12B-4.053(34), states that tax is required on a mortgage, trust deed, security agreement, or other evidence of indebtedness filed or recorded in this state. The tax is measured by the amount of the note or other obligation secured by said mortgage, trust deed, security agreement, or other evidence of indebtedness.

As explained in Rule 12B-4.052(7), F.A.C., "all conveyances, obligations... for the purpose or with the intention of securing the payment of money... shall be deemed and held mortgages..." (s. 697.01, F.S.) See 1955 Op. Att'y Gen. Fla. 055-287 (Oct. 31, 1955).

Section 201.08, F.S., imposes a tax on mortgages. Section 201.08(1), F.S., in pertinent part imposes the tax on mortgages, trust deeds, security agreements, or other evidences of indebtedness filed or recorded in this state. The imposition of tax is on the recording of a mortgage in this state. Therefore, whether the obligation secured by the mortgage is contingent is not controlling, since all mortgages are contingent or executory. 36 Fla. Jur. 2d Mortgages section 1 (1982).

When two mortgage loans made by different borrowers are cross-collateralized, the Department treats each mortgage as

securing not only its own primary obligation, but a contingent obligation of the owner of the mortgaged property guaranteeing the cross-collateralized obligation. Each mortgage is taxable on the aggregate of the obligations secured.

If a mortgage contains a specific limitation on recovery, that mortgage cannot be subject to documentary stamp tax in excess of the limited amount, provided, a limitation cannot be used to circumvent or reduce documentary stamp tax on direct obligations secured by the mortgage which are executed in Florida.

### **Department's Position**

The cross-collateralization agreement described in your letter improves the bank's position for collection. The recordation would constitute a mortgage and would be taxable based on the aggregate amount secured, the total of the notes.

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,

Baldan E. Sulker  
Senior Tax Specialist  
Tax Policy and Dispute Resolution  
Office of General Counsel

BES/mh