

Oct 06, 1997

Re: Technical Assistance Advisement No. 97(B)4-012  
Florida Documentary Stamp Tax; Assumption Agreement  
Section 201.08, F.S.  
XXX (Limited Partnership)  
XXX (Bank)

Dear :

Your letter dated August 1, 1997, requests a Technical Assistance Advisement regarding the applicability of Florida Documentary stamp tax pursuant to s. 201.08, F.S., under the facts and documents set forth herein. This request is made pursuant to Chapter 12-11, F.A.C., and is issued to you under the authority of s. 213.22, F.S.

#### **Statement of Facts**

On XXX, the Limited Partnership acquired title to real property located in Florida. The property was acquired in the form of a capital contribution from one of the constituent partners of the Limited Partnership in exchange for an interest in the partnership.

The property was subject to a mortgage in favor of the Bank. The mortgage was originally a loan made to the contributing partner from the Bank secured by a mortgage recorded against the property.

In connection with the transfer of the real property to the Limited Partnership, Limited Partnership and the Bank entered into an assumption agreement whereby the Limited Partnership assumed the mortgage indebtedness owed by the contributing partner to the Bank. The assumption agreement was executed and delivered outside Florida. The assumption agreement was not recorded in Florida, no other document referencing the assumption has been recorded, and there has been no modification of the mortgage by the Limited Partnership.

### **Requested Rulings**

You request that we affirm the following:

1. The assumption agreement is not subject to documentary stamp tax pursuant to Section 201.08, F.S., and
2. A subsequent default under the mortgage and institution of foreclosure proceedings by the Bank will not cause the assumption agreement to become subject to documentary stamp tax at that time.

### **Provision of the Law**

Section 201.08, F.S., imposes documentary stamp tax on promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation, made, executed, delivered, sold, transferred or assigned in the state and each renewal of the same. The tax shall be 35 cents on each \$100 or fraction thereof of the indebtedness or obligation evidenced thereby. On mortgages, trust deeds, security agreements, or other evidences of indebtedness filed or recorded 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 evidence thereby.

### **Conclusion**

Based on the facts as presented, the assumption agreement was executed and delivered outside the State of Florida and there is no evidence of the assumption being recorded in the State of Florida. Also, no other document referencing the assumption has been recorded in the State of Florida. Therefore, the assumption agreement is not subject to documentary stamp tax under Section 201.08, F.S.

A future default under the mortgage and institution of foreclosure proceedings by the Bank will not cause the assumption agreement to become taxable.

Note that an instrument that conveys an interest in real property to a partnership is subject to tax under Section 201.02(1), F.S. See Rule 12B-4.013(10), F.A.C.

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  
Technical Assistance and Dispute Resolution  
Office of General Counsel

BES/mh