

SUMMARY

The Delivery and Acceptance Receipts are not expressly incorporated into the Lease Agreements. Neither are the Lease Agreements expressly incorporated into the Delivery And Acceptance Receipts. In that the Lease Agreements are not conditioned in any way on execution of the Delivery and Acceptance Receipts, the Delivery and Acceptance Receipts are not relevant to whether the Lease Agreements are subject to documentary stamp tax pursuant to section 201.08, F.S. The Delivery and Acceptance Receipts do not contain any promises to pay money, and therefore are not subject to documentary stamp tax pursuant to section 201.08, F.S.

The terms of the Lease Agreements themselves do make any obligation to pay money conditional on delivery of the tangible personal property to be leased. At the time the Lease Agreements are executed, delivery may never occur. Thus, these Lease Agreements do not contain an unconditional obligation to pay a sum certain in money. Therefore, the Lease Agreements reviewed are not subject to the tax imposed by section 201.08, F.S.

Feb 15, 1999

Re: Technical Assistance Advisement No. 99(B)4-004
Documentary Stamp Tax; Leases
Section 201.08, F.S.; Rule 12B-4.052(6)(b), F.A.C.
XXX (hereinafter taxpayer)

Dear :

Your letter requesting a Technical Assistance Advisement has been referred to this office for response. The specific scenario for which advice has been requested is summarized below.

Facts Presented by Taxpayer

The taxpayer is in the business of leasing tangible personal property to parties in Florida. The taxpayer uses two types of lease agreements. One is characterized for federal income tax purposes as an operating lease, and the other is characterized as a financing lease. Each lease provides that the lease commences as of the date that any of the equipment is delivered to the lessee or its agent.

Both leases also use a separate Delivery and Acceptance Receipt which is signed by the lessee acknowledging the acceptance of the equipment. The Delivery and Acceptance Receipt triggers the commencement of the terms of the lease as well as the lessee's obligation to pay the lease payments. The receipt does not contain the promise to pay nor is it expressly incorporated into the lease, where the obligation to pay is contained.

Request for Advisement

Based on the facts, an advisement is requested addressing the following questions:

Are Florida documentary stamp taxes due and payable upon either the Operating Lease Agreement or the Financing Lease Agreement if the foregoing are executed in Florida? If yes, how are the taxes calculated?

Provisions of Law

Section 201.08, F.S., imposes tax on written obligations to pay a sum certain in money, that are made, executed, delivered, sold, transferred or assigned in this state. A promise to pay that is subject to a condition precedent at the time of execution is generally not taxable. Rule 12B-4.054(5), F.A.C.

Section 201.08(6), F.S., (enacted effective July 1, 1997), provides in part:

Taxability of a document pursuant to this section shall be

determined solely from the face of the document and any separate document expressly incorporated into the document. Taxability of a document pursuant to this section shall not be determined by reference to any separate document referenced or forming part of the same contract or obligation unless the separate document is expressly incorporated into the document...

Rule 12B-4.052(6), F.A.C., provides guidance on what constitutes express incorporation.

Position of the Department

The Delivery and Acceptance Receipts are not expressly incorporated into the Lease Agreements. Neither are the Lease Agreements expressly incorporated into the Delivery And Acceptance Receipts. In that the Lease Agreements are not conditioned in any way on execution of the Delivery and Acceptance Receipts, the Delivery and Acceptance Receipts are not relevant to whether the Lease Agreements are subject to documentary stamp tax pursuant to section 201.08, F.S. The Delivery and Acceptance Receipts do not contain any promises to pay money, and therefore are not subject to documentary stamp tax pursuant to section 201.08, F.S.

The terms of the Lease Agreements themselves do make any obligation to pay money conditional on delivery of the tangible personal property to be leased. At the time the Lease Agreements are executed, delivery may never occur. Thus, these Lease Agreements do not contain an unconditional obligation to pay a sum certain in money. Therefore, the Lease Agreements reviewed are not subject to the tax imposed by section 201.08, F.S.

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,

Celestine Grantham
Senior Tax Specialist
Technical Assistance and Dispute Resolution
Office of General Counsel

CG/mh