



Executive  
Director  
Marshall Stranburg

**QUESTION:** IS DOCUMENTARY STAMP TAX DUE ON A CLOSED-END LOAN TRUTH-IN-LENDING STATEMENT AND A CLOSED-END LOAN AGREEMENT AND SECURITY AGREEMENT?

**ANSWER:** THE TRUTH-IN-LENDING STATEMENT CONTAINS THE AMOUNT FINANCED; HOWEVER, IT DOES NOT CONTAIN AN UNCONDITIONAL PROMISE TO PAY A SUM CERTAIN IN MONEY OR THE SIGNATURE OF THE BORROWER. IT ALSO DOES NOT EXPRESSLY INCORPORATE ANY OTHER DOCUMENT. THE LOAN AGREEMENT DOES CONTAIN A PROMISE TO PAY AND REQUIRES THE SIGNATURE OF A BORROWER; HOWEVER, IT DOES NOT CONTAIN A SUM CERTAIN IN MONEY. THOUGH THE LOAN AGREEMENT MAKES REFERENCE TO THE TRUTH-IN-LENDING STATEMENT, IT DOES NOT EXPRESSLY INCORPORATE THE TRUTH-IN-LENDING STATEMENT OR ANY OTHER DOCUMENT. THEREFORE, THE DOCUMENTS ARE NOT SUBJECT TO DOCUMENTARY STAMP TAX. HOWEVER, TAX APPLIES IF EITHER DOCUMENT IS FILED OR RECORDED IN FLORIDA.

**August 11, 2014**

Re: Technical Assistance Advise ment No. 14B4-005  
Documentary Stamp Tax - - Closed-End Loan Truth-In-Lending Statement and a Closed-End Loan Agreement and Security Agreement  
Section 201.08(1)(a), (b), Florida Statutes (F.S.)  
Rules 12B-4.052(6)(b), 12B-4.053(1), 12B-4.054(29), Florida Administrative Code (F.A.C.)  
XXXXXX (Requestor)

Dear XXXXX:

This is in response to your request dated XXXXX, for a Technical Assistance Advise ment (TAA) pursuant to s. 213.22, F.S., and Rule 12-11, F.A.C., concerning the application of documentary stamp tax on documents provided by the Requestor to XXXXX operating in Florida. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

### **FACTS AS PRESENTED BY PRACTITIONER**

You provided for review a Closed-End Loan Truth-In-Lending Statement (TIL) and a Closed-End Loan Agreement and Security Agreement (Loan Agreement), typically provided by the Requestor to XXXXX located in Florida. You asserted that while the TIL contains a specific amount of money financed, it does not contain a promise to pay money or the signature of the borrower. You further asserted that the Loan Agreement contains a promise to pay money and is signed by the borrower, but it does not contain a sum certain in money. You stated that neither document “expressly incorporates” the other document.

### **REQUESTED RULING**

You requested the Department determine if documentary stamp tax is due on the TIL and Loan Agreement provided for review.

### **LAW AND DISCUSSION**

Section 201.08(1)(a), F.S., imposes documentary stamp tax on written obligations to pay money, and each renewal thereof, made, executed, delivered, sold, transferred, or assigned in Florida. The tax rate is \$.35 for each \$100 or fraction thereof of the indebtedness or obligation evidenced thereby. Section 201.08(6), F.S., states the taxability of a document is to be determined solely from the face of the document and any separate document expressly incorporated into the document.

Rule 12B-4.052(6)(b), F.A.C., dealing with documentary stamp tax, provides that the taxability of a written obligation to pay money is determined from the form and face of the document. Whether a document is taxable is determined by reference to that document and any other document or documents expressly incorporated therein. Express incorporation occurs when words in a document provide that another document or documents are incorporated therein. Some examples of express incorporation include:

- [document] is incorporated herein;
- [document] the terms of which are incorporated herein;
- [document] is made a part hereof;
- [document] is a part of [this document];
- The agreement consists of [this document] and [separate document] the same as if it were fully set forth herein;
- [document] shall become a part of [document]; and
- [document] and [document] constitute a single document.

Rule 12B-4.053(1), F.A.C., provides that the tax is on the “Promise to Pay” and each renewal thereof, and to be a “note or other obligation” it must be signed by the maker or obligor.

To be taxable under s. 201.08(1)(a), F.S., a written obligation to pay money must have the following three elements within the four corners of the document or must expressly incorporate other documents such that, when the documents are read together, it contains these elements:

1. A written promise to pay;
2. A sum certain in money; and
3. The signature of the borrower.

Section 201.08(1)(b), F.S., provides that for mortgages, trust deeds, security agreements, or other evidences of indebtedness filed or recorded in this state, and for each renewal of the same, the documentary stamp tax shall be \$.35 on each \$100 or fraction thereof of the indebtedness or obligation evidenced thereby.

Rule 12B-4.054(29), F.A.C., provides that the filing or recording in Florida of a UCC Financing Statement is not taxable under Section 201.08(1), F.S., unless the note, security agreement or other obligatory document is also filed or recorded. However, a notation relative to stamp tax is required on the UCC Financing Statement whether tax is due or not. The notation shall state that proper stamp taxes under Chapter 201, F.S., have been placed on the promissory instruments and will be placed on any additional promissory instrument, or that tax is not required.

### **DEPARTMENT'S POSITION**

The documents submitted for review are not subject to documentary stamp tax (so long as there are no other documents that expressly incorporate either of the documents reviewed) for the following reasons:

- 1) The TIL contains the amount financed; however, it does not contain an unconditional promise to pay a sum certain in money or the signature of the borrower. Additionally, the TIL does not expressly incorporate any other document.
- 2) The Loan Agreement does contain a promise to pay and requires the signature of a borrower; however, it does not contain a sum certain in money. Though the Loan Agreement makes reference to the TIL, it does not expressly incorporate the TIL or any other document.

Since the Loan Agreement provides for a security interest in property, documentary stamp tax imposed under s. 201.08(1)(b), F.S., would be due if the Loan Agreement is filed or recorded in Florida.

Documentary stamp tax is due on the TIL if it is filed or recorded in Florida since it grants a security interest in 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, your request and related documents 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 before disclosure. In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advise ment, backup material and response within fifteen days of the date of this advise ment.

Sincerely,

Henry Small  
Tax Law Specialist  
Technical Assistance and Dispute Resolution

HJS

Record ID: 173077