



FLORIDA

Executive
Director

Leon M. Biegalski

QUESTION: WAS DOCUMENTARY STAMP TAX DUE ON DOCUMENTS THAT TRANSFERRED INTERESTS IN CONDUIT ENTITIES PURSUANT TO OUT-OF-STATE LAWS?

ANSWER: NO DOCUMENTARY STAMP TAX WAS DUE ON DOCUMENTS THAT TRANSFERRED INTERESTS IN CONDUIT ENTITIES, AS LONG AS THE MERGERS WERE PURSUANT TO THE OUT-OF-STATE LAWS STATED IN THE REQUEST.

August 24, 2016

For the purposes of the Revenue Law Library, the below referenced entities' names are fictitious.

Re: Technical Assistance Advisement No. 16B4-002
Documentary Stamp Tax
Sections 201.02(1)(a), (b), 607.1106(1)(b), Florida Statutes (F.S.), Del. Code Ann. Title 8, § 1-259(a), and Maryland Code Ann. Corps. & Ass'ns. § 3-114(e)(1).
Acquirer REIT
ABC, Inc.
ABC Operating Partnership, L.P.
ABC Subsidiary REIT, Inc.
Grantor
ABC 1, LLC, ABC 2, LLC, and ABC 3, LLC (Subsidiary, LLCs)
Acquirer, L.P.
XYZ Sub, LLC
Borrower 1, LLC, Borrower 2, LLC, and Borrower 3, LLC (Florida Borrower, LLCs)
TRS 1, Inc., TRS 2, Inc., and TRS 3, Inc. (Other Acquirer REIT Subsidiaries)
Merger Subsidiary, LLC

Dear Mr. XXXXX:

This is in response to your request dated April 18, 2016, for a Technical Assistance Advisement (TAA) pursuant to s. 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), concerning the imposition of documentary stamp tax on documents that transferred interests in conduit entities that are related to mergers. 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.

Child Support – Ann Coffin, Director • General Tax Administration – Maria Johnson, Director
Property Tax Oversight – Dr. Maurice Gogarty, Director • Information Services – Damu Kuttikrishnan, Director

<http://dor.myflorida.com/dor/>
Florida Department of Revenue
Tallahassee, Florida 32399-0100

FACTS AS PRESENTED BY PRACTITIONER

In your letter, you presented a series of transactions that relate to a merger between ABC, Inc., a Maryland corporation, and Merger Subsidiary, LLC, a Delaware limited liability company. Merger Subsidiary, LLC, is owned by Acquirer REIT, Inc., a Maryland corporation. This merger was pursuant to Maryland and Delaware law. Acquirer REIT's shares are publicly traded. ABC, Inc., indirectly owned Florida real property through ABC Operating Partnership, L.P., a Delaware limited partnership, of which ABC, Inc., is a general partner. ABC Operating Partnership, L.P., owned ABC Subsidiary REIT, Inc., a Delaware corporation, which in turn owned the Grantor. Grantor within the past three years contributed real properties, some of which were located in Florida, through the Grantor's wholly-owned entities to the Subsidiary, LLCs. The Florida real properties were unencumbered when the Grantor contributed the properties, and there was no other consideration for the transfers. After the transfer of the properties into the Subsidiary, LLCs, equity in the Subsidiary, LLCs, was pledged as collateral in securitization transactions. Since the transfer of the properties into the Subsidiary, LLCs by the Grantor were transferred without full consideration, the Subsidiary, LLCs, were conduit entities pursuant to section 201.02(1)(b), F.S.

Acquirer REIT, through its 100 percent interest in Acquirer, L.P., indirectly owns Florida real properties. Acquirer, L.P., has indirect ownership interests in limited liability companies (Grantor 2, LLCs) that own Florida real property. Grantor 2, LLCs within the last three years contributed real properties, some of which are located in Florida, to XYZ Sub, LLC, wholly owned by Acquirer REIT as part of a securitization transactions credit facility borrowing structure. Other parties involved in the credit facility borrowing structure were the Florida Borrower, LLCs. In addition to the properties contributed by XYZ Sub, LLC, the Florida Borrower, LLCs, purchased Florida real property independently and or contributed properties among themselves. Other Acquirer REIT Subsidiaries also owned Florida real property through contributions from entities other than XYZ Sub, LLC. Regarding the above contributions, the properties were unencumbered when they were transferred, and there was no other consideration for the transfers. After the contributions of the properties into the Florida Borrower, LLCs, equity in the Florida Borrower, LLCs, was pledged as collateral in securitization transactions.

You explained that some preliminary steps were executed prior to the merger. Namely, ABC Operating Partnership, L.P., liquidated and distributed its shares of ABC Subsidiary REIT, Inc. to its partners, which included ABC, Inc., as general partner, based upon their partnership interests. ABC Subsidiary REIT, Inc. then merged into ABC, Inc., under Delaware and Maryland law. In connection with this merger, ABC Subsidiary REIT, Inc.'s, shares were exchanged for ABC, Inc., common shares and ABC Subsidiary REIT, Inc.'s, preferred stockholders received cash.

The next step was ABC, Inc.'s merger into Merger Subsidiary, LLC, under Delaware and Maryland law, with Merger Subsidiary, LLC, surviving the merger. Pursuant to the merger, shares of ABC, Inc. were exchanged for Acquirer REITS shares such that ABC, Inc., owns 60 percent of Acquirer REIT's shares.

REQUESTED RULING

You requested that the Department confirm that no documentary stamp tax was due on the following transactions as described above:

1. ABC Operating Partnership, L.P.'s, liquidation, and the subsequent distribution of ABC Subsidiary REIT, Inc.'s shares.
2. ABC Subsidiary REIT, Inc.'s, merger into ABC, Inc.
3. ABC, Inc.'s, merger into Merger Subsidiary, LLC.

LAW AND DISCUSSION

Section 201.02(1)(a), F.S., imposes documentary stamp tax on deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, shall be granted, assigned, transferred, or otherwise transferred to, or vested in, the purchaser or any other person by his or her direction. In all counties except Miami-Dade, the rate of tax is \$.70 per \$100 of consideration or portion thereof, for the property interest transferred. In Miami-Dade County, the rate of tax is \$.60 per \$100 of consideration or portion thereof, for the property interest transferred. For purposes of this section, consideration includes, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed.

Effective July 1, 2009, s. 201.02(1)(b), F.S., and Rules 12B-4.060(1) and (2), F.A.C., provide that an entity that acquires Florida real property on or after July 2, 2009, from a grantor who owns an interest in the entity, for consideration less than the property's fair market value, is a conduit entity. If the grantor of the property transfers a membership interest in the conduit entity within three years of the entity acquiring the property that caused it to become a conduit entity, documentary stamp tax is due on the transfer of the membership interest, based on the consideration attributable to the property. A mortgage encumbering the property at the time of the membership transfer is consideration.

Section 201.02(1)(b)4., F.S., provides in part that the transfer of shares or similar equity interests in a conduit entity which are dealt in or traded on public, regulated security exchanges or markets is not subject to tax under paragraph (b).

Section 607.1106(1)(b), F.S., provides that "the title to all real estate and other property, or any interest therein, owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment."

Delaware Code Ann. Title 8, § 1-259(a), provides in part that when any merger or consolidation shall have become effective under this chapter, for all purposes of the laws of that state the separate existence of all the constituent corporations, or of all such constituent corporations

except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated; and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise, under the laws of this State, in any of such constituent corporations, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

Maryland Code Ann. Corps. & Ass'ns. § 3-114(e)(1), provides that the effect of the consummation of a consolidation or merger is that the assets of each corporation, partnership, limited partnership, limited liability company, and business trust party to the articles, including any legacies which it would have been capable of taking, transfer to, vest in, and devolve on the successor without further act or deed.

DEPARTMENT'S POSITION

Documentary stamp tax is an excise tax due on certain documents, including deeds that transfer Florida real property based upon the consideration for the transfer. Tax is also due on the transfer of interests in a conduit entity based upon the consideration for the transfer. In the above referenced contributions of properties in which the properties were transferred without full consideration, the entities that received the properties were conduit entities pursuant to s. 201.02(1)(b), F.S.

In the merger scenarios presented above, the liquidation of the ABC Operating Partnership, L.P., and subsequent distribution of shares in ABC Subsidiary REIT, Inc., to ABC Operating Partnership, L.P.'s partners would not be considered a transfer of an interest in a conduit entity, so long as the partners did not receive any direct or indirect ownership in the Florida properties other than what they already owned.

The merger of ABC Subsidiary REIT, Inc., into ABC, Inc., and of ABC, Inc., into Merger Subsidiary, LLC, took effect under laws other than those of the state of Florida. There is no specific provision found in the Florida statutes that exempts from documentary stamp tax a document that transfers an interest in a conduit entity pursuant to a merger where neither of the

artificial entities merging is a Florida entity, nor is there a provision which states that the transfer occurs by operation of Florida law. The Department currently holds the position that properties transferred pursuant to Florida merger laws are transferred by operation of law and, thus, are not subject to documentary stamp tax.

The Department also takes the position that if a merger takes effect under another state's law that is virtually identical to Florida law, (i.e., that transfers real property by operation of law), no tax would be due on any document, such as a deed, that purports to transfer Florida real property.

The Department agrees that Maryland and Delaware merger laws are virtually identical to Florida merger statutes and that any merger under Maryland and Delaware law would transfer real property by operation of law. Therefore, the Department determines that no documentary stamp tax was due on documents that transferred Florida real property or that transferred interests in the conduit entities pursuant to the mergers presented in the above scenario, as long as the mergers were pursuant to Maryland and Delaware merger law and executed as presented with this request.

Additionally, since Acquirer REIT's shares are publicly traded, any interests in conduit entities obtained by ABC, Inc. through the exchange of Acquirer REIT's shares would not be subject to documentary stamp tax pursuant to s. 201.02(1)(b)4., 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, 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 Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,
Henry Small
Tax Law Specialist
Technical Assistance and Dispute Resolution

HJS/
Record ID: 210546