

SUMMARY

QUESTION: Is Florida's documentary stamp tax as imposed under s. 201.08(1)(a), F.S., due on a master lease, supplement, or certificate of acceptance if either or all are executed in Florida if the master lease document contains the obligation to pay, default remedies, and other general terms of the lease relationship and the terms of payment are contained in a supplement document?

ANSWER - Based on Facts Below: Section 201.08(1)(a), F.S., imposes documentary stamp tax on notes and other written obligations to pay money executed, signed, or delivered in Florida. Taxability of a document 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. A document does not expressly incorporate another document by implication or by mere reference and description of the other document. Express incorporation occurs when words in a document under examination provide that another document or documents are incorporated into the document under examination. The documentary stamp tax is due on a master lease agreement if the agreement is executed, signed, or delivered in Florida and if the master lease agreement contains within itself, or within itself and all other documents expressly incorporated within, an unconditional promise to pay a sum certain in money.

A review of the documents (master lease, supplement, and certificate of acceptance) results in a determination that, when read alone, none contains an unconditional obligation to pay a sum certain in money. Therefore, neither of the documents alone is subject to the documentary stamp tax. It is also determined that the language of the master lease does not expressly incorporate the supplement, but only provides that the supplement will refer to and incorporate by reference the master lease. However, a review of the supplement resulted in no finding of express incorporation of the master lease or the certificate of acceptance. It is also determined that the certificate of acceptance does not expressly incorporate the master lease or the supplement. Therefore, since there is no express incorporation, neither document can be read in combination with any other document to determine if there is an unconditional obligation to pay a sum certain in money. No documentary stamp tax, as imposed under s. 201.08(1)(a), F.S., is due on the documents reviewed, even if they are executed in Florida.

July 21, 2004

Re: Technical Assistance Advisement No. 04B4-009

Documentary Stamp Tax - Equipment Lease

Section 201.08(1)(a), F.S.

XXX ("Taxpayer")

XXX ("Corporation")

Dear :

This is in response to your letter dated April 1, 2004, requesting a Technical Assistance Advisement regarding application of Florida's documentary stamp tax as imposed under s. 201.08(1)(a), F.S., upon a master lease agreement executed in Florida where Taxpayer is lessee.

Facts as Presented by Petitioner

Taxpayer is incorporated in Delaware with its principal place of business in Florida. Taxpayer is in the business of retail sales of office supplies and equipment. Taxpayer leases computers and related equipment from Corporation in the ordinary course of business. The character of the lease for federal tax and accounting purposes is a true or operating lease.

Taxpayer entered into a Term Lease Master Agreement ("Master Lease") with Corporation in 1995. The Master Lease includes three addendums added between 1995 and 1997, and one amendment added in 2000. The Master Lease contains the obligations to pay, default remedies, and other general terms of the lease relationship. The Master Lease does not contain a description of the equipment, or any of the terms of payment. These terms are contained on a second document, the Term Lease Supplement ("Supplement"), which contains a specific description of the property leased, cost, location, monthly payment terms, commencement of payments, and terms of any purchase option. The Master Lease specifically incorporates the terms of the Supplement by reference.

The Master Lease states that the Lessee's obligation to pay shall begin on the Rent Commencement Date. Pursuant to the Amendment to Master Lease, the Rent Commencement Date is defined as the first day of the first full payment period, as specified on the Supplement, following the date the equipment is accepted by the Lessee.

The equipment is accepted by the execution of a third document, the Certificate of Acceptance. The Certificate of Acceptance references the Master Lease, but it is not incorporated into the Master Lease, nor does it incorporate the Master Lease by reference.

Request for Advisement

- 1.) Is Florida documentary stamp tax due and payable upon the Master Lease, the Supplement, or the Certificate of Acceptance if the foregoing are executed in Florida?
- 2.) If the Master Lease is executed outside of Florida but the Supplement and Certificate of Acceptance are executed in Florida, is Florida documentary stamp tax due and payable?
- 3.) If the answer to either question 1 or question 2 is yes, what is the amount upon which Florida documentary stamp tax is calculated?

Law and Discussion

Section 201.08(1)(a), F.S., imposes documentary stamp tax on notes and other written obligations to pay money executed, signed, or delivered in Florida. The tax is calculated at the rate of 35 cents per \$100 or fractional part thereof of the indebtedness or obligation evidenced by the document.

Rule 12B-4.052(6), F.A.C., provides in pertinent part:

(b) Taxability of a written obligation to pay money is determined from the form and face of the document.

1. Whether a document is taxable is determined by reference to that document and any other document or documents expressly incorporated therein.

2. A document does not expressly incorporate another document by implication or by mere reference and description of the other document.

3. Express incorporation occurs when words in a document under examination provide that another document or documents are incorporated into the document under examination....

Florida's documentary stamp tax, as imposed under s. 201.08(1)(a), F.S., is due on a master lease agreement if the master lease agreement is executed, signed, or delivered in Florida and if the master lease agreement contains within itself, or within itself and all other documents expressly incorporated within, an unconditional promise to pay a sum certain in money. Express incorporation does not exist when a document is only referred to in the body of another.

Position of the Department

A review of the documents (Master Lease, Supplement, and Certificate of Acceptance) provided with your request for a technical assistance advisement results in a determination that, when read alone, none contains an unconditional obligation to pay a sum certain in money. Therefore, neither the Master Lease, Supplement, nor Certificate of Acceptance is subject to the documentary stamp tax.

The Master Lease does provide that "A Supplement shall refer to and incorporate by reference this Agreement and, when signed by the parties, shall constitute the lease (Lease) for the Equipment specified therein." This language does not expressly incorporate the Supplement, but only provides that the Supplement will refer to and incorporate by reference the agreement. However, a review of the Supplement resulted in no finding of express incorporation of the Master Lease or the Certificate of Acceptance. It is also determined that the Certificate of Acceptance does not expressly incorporate the Master Lease or the Supplement. Therefore, since there is no express incorporation, neither document can be read in combination with any other document to determine if there is an unconditional obligation to pay a sum certain in money. No documentary stamp tax, as imposed under s. 201.08(1)(a), F.S., is due on the documents reviewed, even if they are executed in Florida.

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 backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Charles T. Phillips
Tax Law Specialist
Technical Assistance and Dispute Resolution

CTP/mh