

Summary

Husband and wife jointly own a condominium which they wish to convey to their joint trust. The condo is encumbered by a mortgage. Under s. 201.02, F.S., if a mortgage encumbers real property that is owned by two persons, in this case husband and wife, only minimum documentary stamp tax is due on recordation because there is no conveyance. The husband and wife owned it as individuals and they still own the property once it is in their joint trust.

Where only one of two parties has title to mortgaged property which is being conveyed to a trust for the both of these parties, documentary stamp tax is due on the 50% interest being transferred from the person now in title to the second person who is the second beneficiary of the trust. Therefore, 50% of the total outstanding principal mortgage balances existing on the property on the date of the assessed deed is the basis for the tax.

April 14, 2009

XXX

Re: Technical Assistance Advisement No. 09B4-003
Documentary Stamp Tax on Conveyances from Owners to a Trust Where Husband and
Wife are Beneficiaries for Their Lifetimes
Sections 201.02, F.S.
Rules 12B-4.013 (9), (22), (28), (29)(a)(b), F. A.C.
XXX

XXX:

This is in response to your request for a technical assistance advisement asking for an opinion on whether a conveyance from the husband or from the husband and wife to a trust of the husband and wife are subject to documentary stamp tax and how to calculate the tax.

FACTS AS PRESENTED BY PETITIONER

Three mortgages encumber part or all of the seven condominium units involved in this technical assistance advisement. Mortgage #1 encumbers units #1 through #6. Mortgage #2, a line of credit, also encumbers units # 1 through #6 and unit #7. Mortgage #3 encumbers only unit #7.

These seven condominium units in XXX are owned by Husband and/or Wife. They wish to convey these condominiums to a trust for the benefit of Husband and Wife.

Units #1 through #6 of the condominium units are owned in the name of Husband. Mortgage #1 and Mortgage #2, the line of credit, encumbers units #1 through #6.

Unit #7 is owned jointly in the name of Husband and Wife. This unit is encumbered by a separate first mortgage (Mortgage #3) and also the same line of credit mortgage (Mortgage #2) which also covers units #1 through #6.

REQUESTED RULING

You request the Department's determination as to how to calculate the documentary stamp tax on the deeds conveying these seven condominium units to a trust where the Husband and Wife are the beneficiaries.

LAW AND DISCUSSION

Under s. 201.02, F.S., the basis for computing the amount of documentary stamp tax due on conveyances of real property is termed consideration:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.

(1) On deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any other person by his or her direction, on each \$100 of the consideration therefor the tax shall be 70 cents. When the full amount of the consideration for the execution, assignment, transfer, or conveyance is not shown in the face of such deed, instrument, document, or writing, the tax shall be at the rate of 70 cents for each \$100 or fractional part thereof of the consideration therefor. 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. . . .

Under Rule 12B-4.013, F. A. C.: Conveyances Subject to Tax.

(9) Condominium Units: Instruments conveying interest or ownership in a condominium unit are subject to tax.

(22) Mortgage on Property: When computing the tax under Section 201.02, F.S., on a deed of conveyance, the total consideration includes any mortgages encumbering the property being transferred.

Cross Reference - subsections 12B-4.013(7), (8), (10) and 12B-4.013(31), F.A.C.

(28) Husband and Wife Deeds: Deeds transferring unencumbered property between spouses are not taxable, except that any consideration paid by one spouse to the other spouse for additional shares greater in value than their undivided interest is taxable. Where the property is encumbered, tax is based on the mortgage balance in proportion to the interest transferred by the grantor.

(29)(a) No change in Beneficial Ownership: A deed from X to a trustee is exempt from the stamp tax to the extent of X's beneficial ownership interest as a trust beneficiary, whether or not the real property is encumbered by a mortgage. For example, if X owns encumbered or unencumbered real property and conveys it to the trustee of a trust of which X is the sole beneficiary, the conveyance is exempt from the stamp tax.

(29)(b) Change in Beneficial Ownership: If persons other than X are trust beneficiaries, then a deed from X to a trustee is taxable to the extent of the consideration, if any, for the beneficial interest in the real property transferred to such other persons. The stamp tax is based on any cash, note, release or other consideration from the trust beneficiaries other than X, including their proportionate share of any mortgage encumbering the real property. For example, if X owns unencumbered real property valued at \$100 and X conveys the property to the trustee of a trust of which X and Y are each 50% beneficiaries, and Y pays \$50 cash for the conveyance to the trustee, then stamp tax would be due based on a consideration of \$50.

When Unit #7 held in the name of the Husband and Wife, is transferred to the trust for Husband and Wife (whether encumbered or unencumbered by mortgages) only minimum (\$.70) documentary stamp tax is due. This is so because there is no change in beneficial interest. Husband and Wife are currently in title to the property, and a deed to a revocable trust where Husband and Wife are the only beneficiaries during their lifetimes would not represent a conveyance to another person or entity. Therefore, only minimum documentary stamp tax is due.

The transfer of Unit #1 through Unit #6 currently held in the Husband's name only to the trust for Husband and Wife is a taxable transfer because of the conveyance of 50% of the interests in Unit #1 through Unit #6 to the Wife. The amount of tax due is calculated as shown below in item #'s I through VI.

- I. Regarding Mortgage #1 which cover Units #1 through #6 and Mortgage #2 which covers Units #1 through #7:
Determine the proportionate value of each of the properties in these mortgages by calculating the pro rata amount of each mortgage for each property: Fair market value of each property divided by the total of all of the fair market values of properties secured by the mortgage times the outstanding principal balance. Calculate Mortgage #1 separately from Mortgage #2.
- II. Add together the outstanding principal amount of Mortgage #1 for each individual unit under the two blanket mortgages determined in #1 above (Mortgage #1 for 6 units, Mortgage #2 for 7 units).
- III. Multiply this sum by 50 %.
- IV. Round that figure up to the nearest \$100.
- V. Divide the resulting amount in # IV by 100.
- VI. Then multiply the figure obtained in # V by \$.70 cents (except in Dade County).

The resulting figure is the amount of documentary stamp tax due on each deed from grantor (Husband) to Husband and Wife as beneficiaries of the Trust for Husband and Wife.

DETERMINATION

The only documentary stamp tax due on the deed of the condominium currently owned jointly by Husband and Wife to Husband and Wife's Trust is the minimum documentary stamp tax. Each deed for the six units currently owned by Husband is subject to documentary stamp tax based on 50 percent of the pro rata portions of the outstanding principal balances of all the mortgages pertaining to each of these six properties. The process for calculation of the tax on each deed is shown above.

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,

M. E. Clemens, C.P.A.
Senior Tax Specialist
Technical Assistance and Dispute Resolution

MEC/bb