

12B-4.052 Computation of Tax; Definitions.

(1)(a) Notes and Written Obligations to Pay Money: The amount upon which the tax is measured, when the documents provide for a discount of unearned interest or finance charges in exchange for early payment, is the amount financed or principal indebtedness. The payment of interest or finance charges is a contingent obligation and is not taxable (Department of Revenue v. North Port Bank, 354 So. 2d 463 (Fla. 1st DCA 1978)). Miscellaneous charges, such as credit life insurance, which are included in the amount financed or principal indebtedness are not contingent obligations at the time the note is executed and are taxable.

(b) Mortgages and Other Evidences of Indebtedness: The tax required to be paid on mortgages and other evidences of indebtedness filed or recorded in this state is calculated on the indebtedness or obligation secured by the mortgage, regardless of whether the indebtedness is contingent.

(2) Retail Installment Contract: "Retail installment contract" or "contract" means an instrument or instruments reflecting one or more retail installment transactions entered into in this state pursuant to which goods or services may be paid for in installments. It does not include a revolving account or an instrument reflecting a sale pursuant thereto.

(3) Revolving Charge Accounts: "Revolving account" or "account" means an instrument or instruments prescribing the terms of retail installment transactions which may be made thereafter from time to time pursuant thereto, under which the buyer's total unpaid balance thereunder, whenever incurred, is payable in installments over a period of time and under the terms of which a finance charge is to be computed in relation to the buyer's balance from time to time.

(4) Instruments Deemed Retail Installment Contract: An instrument which is in fact a retail installment contract is taxable under Section 201.08(1), F.S., even though the instrument may be designated a revolving charge account.

(5) Taxable Documents: As used in these regulations, "taxable documents" includes promissory notes, nonnegotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, mortgages, trust deeds, security agreements, and other evidences of indebtedness filed or recorded in the state, and for each renewal of the same, unless such renewal would be exempt under Section 201.09, F.S.

(6) Written Obligation or Promise to Pay Money:

(a) The tax levied by Section 201.08(1), F.S., is an excise tax on the promise to pay and the terms and certainty of payment are not material (Plymouth Citrus Growers Ass'n v. Lee, 157 Fla. 893, 27 So. 2d 415 (1946)). Where a grantee accepts a deed containing the assumption of a mortgage, said assumption constitutes a promise to pay and is taxable (Alabama-Florida Company v. Mays, 111 Fla. 100, 149 So. 61 (1933); 1961 Op. Att'y. Gen. Fla. 061-8 (January 23, 1961)). If the holder of a contract can recover a judgment by proving the contract and non-payment, the contract constitutes a promise to pay and is taxable. (Maas Brothers, Inc. v. Dickinson, 195 So. 2d 193 (Fla. 1967))

(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.

4. Following are examples of terminology whereby a document is expressly incorporated into the document under examination.

a. [document] is incorporated herein;

b. [document] the terms of which are incorporated herein;

c. [document] is made a part hereof;

d. [document] is a part of [this document];

e. The agreement consists of [this document] and [separate document] the same as if it were fully set forth herein;

f. [document] shall become a part of [document];

g. [document] and [document] constitute a single document.

5. Following are examples of terms in a document under examination that do not expressly incorporate another document, unless the document under examination otherwise contains language that meets the criteria of subparagraphs (b)3. or (b)4. above.

a. In the attachment hereto;

b. Is subject to;

c. Is subject to the terms of;

- d. Pursuant to;
- e. Pursuant to the terms of;
- f. As set forth in;
- g. Reference is made to;
- h. Governed by.

6. An integration clause or a default remedy clause, does not, by itself, expressly incorporate another document, unless the clause contains language that meet the criteria of subparagraph 12B-4.052(6)(b)3. or 4., F.A.C., above.

(7) Instruments Deemed Mortgages: “All conveyances, obligations conditioned or defeasible, bills of sale or other instruments or writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money. . . shall be deemed and held mortgages. . . .” (Section 697.01, F.S.) (See 1955 Op. Att’y. Gen. Fla. 055-287 (Oct. 31, 1955)).

(8) Certificate of Indebtedness: Certificates of indebtedness issued by corporations are subject to tax.

(9) Interest: Where borrower promises to pay both the amount financed and interest during the term of the note, the borrower’s only absolute obligation or indebtedness at the time he signs such note is for the amount financed and not for unearned interest. (Department of Revenue v. North Port Bank, 354 So. 2d 463 (Fla. 1st DCA 1978))

(10) Open-end and Future Advance Mortgages: Tax is due on the mortgage when filed or recorded in the state based upon the maximum indebtedness secured, exclusive of any amount that may be covered in a future advance clause. Regardless of whether the indebtedness secured by the mortgage is contingent, the mortgage is subject to tax based upon the maximum amount of the indebtedness secured. Each future advance made under a future advance clause is taxable when such future advance is made. The mortgage shall not be enforceable in any court in this state, as to the future advance, until the tax due on each advance has been paid.

(11) Adjustable Rate Mortgages: Tax is due at the time of recordation or execution on an adjustable rate mortgage based upon the principal amount of the note it secures, which may include accruing interest added to the principal if the increased amount is a stated or computable amount at the time of recordation or execution. A renewal of an adjustable rate note or mortgage is taxable only on the amount the principal is increased if all other requirements of Section 201.09(3), F.S., are met.

(12) Renewals: Each renewal, as defined in Section 201.08(5), F.S., of a written obligation to pay money, or of a mortgage or other security agreement, is taxable, unless it satisfies the requirements of Section 201.09(1), F.S.

(a) Except as provided in paragraph (f), a written agreement, such as a loan agreement, that alters or modifies the contract or obligation of an original promissory note, mortgage, trust deed, security agreement, or other evidence of indebtedness, by adding one or more obligors, increasing the principal balance, changing the interest rate, changing the maturity date, changing the payment terms, or assuming the terms of the original contract or obligation, is a renewal of the original note, mortgage, trust deed, security agreement, or other evidence of indebtedness. A renewal that does not add obligor(s) and merely changes the interest rate, the maturity date, or the payment terms is not subject to tax, provided tax was paid on the original document and the original document is attached to the renewal.

(b) A renewal of a term obligation is subject to tax on the amount of the increase of the unpaid principal balance, with a maximum tax due of \$2,450 on the aggregate of the original obligation and all renewals thereof that satisfy the requirements of Section 201.09(1), F.S. A term loan with periodic disbursements, such as a construction loan, may be renewed for the undisbursed amount, together with the unpaid balance of the amount that was previously disbursed, without payment of additional tax.

Cross Reference – paragraph (e) of this subsection.

(c) A renewal of a revolving obligation is subject to tax on the amount of the increase over the original face amount of the original obligation with a maximum tax due of \$2,450 on the aggregate of the original obligation and all renewals thereof that satisfy the requirements of Section 201.09(1), F.S.

Cross Reference – paragraph (e) of this subsection.

(d) Under paragraphs (b) and (c), a separate side note is not required. The principal balance or original face amount can be indicated by a notation on the renewal document, by reference to the document being renewed, or by other proof retained by the borrower(s) or lender.

(e) The maximum tax due on an original obligation and all renewals thereof that satisfy the requirements of Section 201.09(1), F.S., is \$2,450. An obligation upon which the maximum tax due of \$2,450 was paid may be renewed, so long as the requirements of Section 201.09(1), F.S., are met, without additional tax assessed. The \$2,450 tax limitation does not apply to a mortgage, security agreement, or other lien filed or recorded in Florida.

1. Example: The proper amount of tax of \$2,450 was paid on a term obligation of \$1,000,000, that was executed in Florida on

July 1, 2002, and was not secured by a mortgage, security agreement, or other lien filed or recorded in Florida. On August 1, 2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$500,000 increase of the unpaid principal balance. No additional tax was due on the renewal, since the maximum aggregate tax of \$2450 was paid on the original obligation. Each renewal thereafter is not subject to additional tax, so long as each renewal meets the requirements of Section 201.09(1), F.S.

2. Example: The proper amount of tax of \$1,750 was paid on a revolving obligation of \$500,000, that was executed in Florida on July 1, 2002, and was not secured by a mortgage, security agreement, or other lien filed or recorded in Florida. On August 1, 2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$500,000 increase above the original face amount of the original obligation. Additional tax of \$700 was due on the renewal, bringing the total tax paid on the original obligation and all renewals thereof to the maximum aggregate amount of \$2,450. Each renewal thereafter is not subject to additional tax, so long as each renewal meets the requirements of Section 201.09(1), F.S.

3. Example: The proper amount of tax of \$1750 was paid on a revolving obligation of \$500,000, that was executed in Florida on July 1, 2002, and was not secured by a mortgage or other lien filed or recorded in Florida. On August 1, 2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$100,000 increase above the original face amount of the original obligation. Additional tax of \$350 was due on the renewal, bringing the aggregate tax paid on the original obligation and this renewal to \$2,100. Additional tax of \$350 will be due on any renewal or renewals thereafter, where the amount of the increase or increases equals or exceeds \$100,000 (the amount of the increase or increases required to bring the aggregate tax to \$2,450).

4. Example: The proper amount of tax of \$2,450 was paid on a term obligation of \$700,000, that was executed in Florida on July 1, 2002, and was secured by a mortgage recorded in Florida. On August 1, 2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$500,000 increase of the unpaid principal balance. The mortgage was spread to secure the renewal. Additional tax of \$1,750 was due on the mortgage spreader, since there is no limit on the amount of tax due on a mortgage.

(f) Notwithstanding paragraphs (a), (b) and (c), above:

1. A renewal note that adds one or more obligors is subject to tax on the full amount of the obligation. The maximum tax due on a renewal that adds one or more obligors is \$2,450.

2. An assumption of an existing obligation is subject to tax on the full amount of the note assumed. The maximum tax due on an assumption of an existing obligation is \$2,450.

3. A renewal note is subject to tax on the full amount of the obligation, with a maximum tax due of \$2,450, if the proper tax was not paid on the instrument being renewed.

a. A renewal of a promissory note is subject to tax on the full amount of the obligation, with a maximum tax due of \$2,450, if the note being renewed is not attached with cancelled stamps or an appropriate notation showing full payment of tax imposed by law.

b. A renewal mortgage or other security document shall state the official book and page number of the original mortgage or other security document being renewed which evidences prior payment in full of stamp tax due, or shall have attached to it for recording the original note or a copy thereof with evidence of proper stamp tax paid. Unless this evidence is present, the renewal mortgage is subject to tax on the full amount of the obligation.

4. If the original note and mortgage is satisfied, an instrument that might otherwise appear to be a renewal of the original note and mortgage is taxable on the full amount of the obligation. (In this case, the instrument represents a new obligation.)

(g) A written agreement that does not modify the terms of the indebtedness evidenced by a promissory note, mortgage, trust deed, security agreement, or other evidence of indebtedness in a way described in paragraph (a) is not a renewal. Examples of modifications to documents that are not renewals include those given or recorded to:

1. Correct errors;
2. Modify covenants, conditions, or terms unrelated to the debt;
3. Sever a lien into separate liens;
4. Provide additional or substitute security for the indebtedness;
5. Consolidate indebtedness or collateral;
6. Add, change, or delete guarantors;
7. Substitute a new mortgagee or payee; or

8. Change only the interest rate, made as the result of the discontinuation of an index to which the original interest rate is referenced.

(h) When a promissory note references terms (interest rate, payments terms, or maturity date) contained in a loan agreement and neither document expressly incorporates the other, a modification or amendment of such terms contained in the loan agreement is not treated as a renewal of the promissory note. However, if the modifying document amends the promissory note itself in a way described in the definition of a renewal in paragraph (a), then the modifying document is a renewal.

(13) Line of Credit Mortgages: The tax required on a mortgage recorded to secure a revolving line of credit is calculated on the maximum amount of the secured line of credit, as determined from the face of the recorded mortgage or from the credit documents incorporated therein by reference, regardless of whether the obligation to repay may be contingent upon the advancement of sums under the line of credit. (Barnett Bank v. Department of Revenue, 571 So. 2d 527 (Fla. 3d DCA 1990); Department of Revenue v. Lincoln Pointe Associates, 544 So. 2d 291 (Fla. 1st DCA 1989))

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