**PART II DEEDS - DOCUMENTARY STAMP TAX AND SURTAX**

Current through 12-28-18

**12B-4.001 Payment of Tax.**

(1) County Comptroller or Clerk of the Circuit Court.

(a) County Comptroller or Clerk of the Circuit Court – Each County Comptroller, or if there is none, then Clerk of the Circuit Court of each county, hereinafter referred to as Clerk of the Court, shall collect the tax imposed by Chapter 201, F.S., on recorded documents, and may collect the tax on unrecorded documents, keeping a journal indicating the amount of tax paid. Clerks of the Court that elect to collect the tax on unrecorded documents shall meet the requirements of paragraph (b). All taxes collected on behalf of the state and associated information shall be electronically submitted to the Department, as provided in Section 213.13, F.S., and Rule Chapter 12-28, F.A.C. There shall be no collection allowance allowed to the Clerk of the Court when the tax is collected and not remitted in accordance with these rules.

(b) A notation is required on each document recorded or unrecorded by the Clerk of the Court that indicates the amount of tax paid and the county where payment is being made. The notation may be signed, initialed, or stamped with the name or initials of the Clerk of the Court, or designated agent thereof.

(2) Registered Persons – Unrecorded Documents.

(a) Any person who has averaged or will average at least 5 taxable transactions per month is required to register with the Department and remit the taxes due directly to the Department for all documents not to be recorded. Any person with less than 5 transactions per month has the option, but is not required, to register with the Department. The procedures provided in this subsection do not apply to documents that are to be recorded with the Clerk of the Court.

(b) A separate registration application is required for each location where taxable documents that are not recorded with the Clerk of the Court are maintained.

(c) Registration with the Department for the purposes of the documentary stamp tax is available by using one of the following methods:

1. Registering through the Department’s Internet site at the address shown in the parentheses (www.myflorida.com/dor) using the Department’s “e-Services.”

2. Filing an Application to Collect and/or Report Tax in Florida (form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.) with the Department, as indicated on the registration application.

(d) Each application submitted to the Department must contain sufficient information to facilitate the processing of the application.

(e) Any person registered with the Department for documentary stamp tax purposes is required to file a Documentary Stamp Tax Return for Registered Taxpayers (form DR-225B, incorporated by reference in Rule 12B-4.003, F.A.C.) and remit the tax due.

(f) Any person registered shall keep a journal, or other account book or record of original entry, maintaining a listing of all unrecorded documents executed and delivered. The journal shall show a daily listing of each document, indicating every document transaction, the amount, and whether the document is taxable. When the document is taxable, the amount of tax due shall be indicated for each document. When the document is not taxable, the journal must indicate the reason for the exemption.

(g) The following notation or similar language, along with the amount of tax and the certificate of registration number, is required to be made on each document requiring tax under this procedure: “Florida documentary stamp tax required by law in the amount of $\_\_ has been paid or will be paid directly to the Department of Revenue. Certificate of Registration No. \_\_.” For persons filing returns who have less than five taxable transactions per month and have opted not to register, no registration number is required on such documents.

(3) Unregistered Persons.

(a) Any person engaged in an average of less than 5 taxable transactions per month is not required to register with the Department, but may elect to register to report documentary stamp tax due.

(b) Any person who is not required to register and has not elected to register is required to file a Documentary Stamp Tax Return For Nonregistered Taxpayers’ Unrecorded Documents (form DR-228, incorporated by reference in Rule 12B-4.003, F.A.C.) and remit tax due.

(4) Payment and Return Due Dates.

(a) For monthly filers, payments for documentary stamp tax and the associated return certifying the amount of tax due for the preceding month must either reach the Department or be postmarked on or before the 20th day of the month following the transaction to avoid penalty and interest for late filing. When the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied with returns will be accepted as timely if postmarked on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this rule, a “legal holiday” means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) When quarterly, semiannual, or annual reporting is authorized by the Department pursuant to Section 201.133(8), F.S., the tax and associated return is due no later than the 20th day of the month following the authorized reporting period and becomes delinquent on the 21st day of that month.

(5) Procedures to Follow in Closing Out Alternate Procedure Stamp Accounts of Clerks:

(a) The Clerk’s receipts will be reconciled with remittances of tax to the Department.

(b) The Clerk’s receipts will be reconciled with tax affixed to recorded documents.

(c) The amount of tax due, less the collection allowance, will be collected from the Clerk by the Department.

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 116.01, 201.01, 201.08, 201.09, 201.11, 201.12, 201.13, 201.132, 201.133, 201.14, 213.756, 219.07 FS. History–Revised 8-18-73, Formerly 12A-4.01, Amended 2-21-77, 12-3-81, Formerly 12B-4.01, Amended 12-5-89, 2-16-93, 12-30-97, 5-4-03.*

**12B-4.003** **Public Use Forms.**

(1)(a) The following public-use forms and instructions are employed by the Department of Revenue in its administration of the documentary stamp tax, and are hereby incorporated in this rule by reference.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department’s website at www.floridarevenue.com; or, 2) calling the Department at (850)488-6800, Monday through Friday (excluding holidays); or, 3) visiting any local Department of Revenue Service Center; or, 4) writing the Florida Department of Revenue, Taxpayer Services, Mail Stop #3-2000, 5050 West Tennessee Street, Tallahassee, Florida 32399-0112. Persons with hearing or speech impairments may call the Florida Relay Service at 1(800)955-8770 (Voice) and 1(800)955-8771 (TTY).

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| Form Number | Title | Effective Date  |
| (2) DR-225 | Documentary Stamp Tax Return for Registered Taxpayers’ Unrecorded Documents (R. 01/16)(<http://www.flrules.org/Gateway/reference.asp?No=Ref-06326>) | 01/16 |
| (3) DR-228 | Documentary Stamp Tax Return for Nonregistered Taxpayers’ Unrecorded Documents(R. 01/16)(<http://www.flrules.org/Gateway/reference.asp?No=Ref-06328>) | 01/16 |
| (4) DR-229 | Documentary Stamp Tax – subsection 201.02(6), F.S.,Exemption (R. 01/16)(<http://www.flrules.org/Gateway/reference.asp?No=Ref-06329>) | 01/16 |

*Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 119.071(5), 201.01, 201.02(1), (4), 201.031(1), 201.07, 201.08(1)(a), 201.133 FS. History–New 8-18-73, Formerly 12A-4.03, Amended 9-26-77, 12-11-78, Formerly 12B-4.03, Amended 12-5-89, 2-16-93, 10-20-93, 12-30-97, 5-4-03, 6-28-05, 1-1-08, 4-14-09, 1-11-10, 6-28-10, 4-25-12, 1-11-16.*

**12B-4.004 Refunds.**

(1) Any person who has overpaid documentary stamp tax or discretionary surtax may seek a refund by filing an Application for Refund (form DR-26, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department. Form DR-26 must meet the requirements of Sections 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

(a) Form DR-26, Application for Refund, must be filed with the Department for tax paid on or after October 1, 1994, and prior to July 1, 1999, within 5 years after the date the tax was paid.

(b) Form DR-26, Application for Refund, must be filed with the Department for tax paid on or after July 1, 1999, within 3 years after the date the tax was paid.

(2) When an application for refund of taxes paid is made by a person other than the maker of the document or instrument, the applicant must provide documentation that the tax was paid by the applicant. (Attorney General Opinion 065-76, July 22, 1965, 1965-66 Biennial Report, Page 105)

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 95.091, 213.255, 215.26 FS. History–Revised 8-18-73, Formerly 12A-4.04, Amended 12-26-77, Formerly 12B-4.04, Amended 12-30-97, 5-4-03.*

**12B-4.005 Penalties and Interest.**

(1) Failure to Pay Tax Required:

(a) Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, shall be guilty of a misdemeanor and upon conviction shall be punished accordingly.

(b) Any document, instrument, or paper upon which the tax under this chapter is imposed and which, upon audit or at time of recordation, does not evidence the proper amount of tax paid shall subject the person or persons liable for the tax upon the document, instrument or paper to:

1. Payment of tax not paid;

2. Effective January 1, 1993, payment of penalty to the Department shall increase from 25 percent to 50 percent of the tax not paid. Effective April 1, 1997, the penalty shall be imposed at a rate of 10 percent per month, or fraction thereof, of the unpaid tax, not to exceed 50 percent. The penalty for failing to file a timely return shall not be less than ten dollars. However, the Department shall compromise the penalty if the Department determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. Any remaining penalty is subject to the compromise and settlement authority provided in Chapter 12-13, F.A.C. In making a determination whether the penalty should be reduced, the Department shall be guided by such criteria as whether administrative rules exist regarding analogous transactions and whether there are court decisions or opinions of the Attorney General which are relevant to the taxability of the document. A taxpayer’s good faith belief that the document was not taxable does not, of itself, authorize a reduction in the penalty. If any part of the deficiency is due to fraud, a penalty of 200 percent of the deficiency shall be imposed;

(2)(a) Payment of interest shall be at the following rate:

1. One percent per month (prorated daily using the daily factor of.000328767) for payments due prior to January 1, 2000.

2. For payments due on or after January 1, 2000, the rate of interest established pursuant to Section 213.235, F.S., and Rule 12-3.0015, F.A.C., prorated daily.

(b) Interest accrues based upon the amount of the tax not paid from the date the tax is due until the tax is paid.

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.11, 201.12, 201.17, 201.20, 213.21, 213.235 FS. History–Revised 8-18-73, Formerly 12A-4.05, Amended 2-21-77, 4-2-78, 10-18-78, 12-30-82, Formerly 12B-4.05, Amended 12-5-89, 2-16-93, 10-20-93, 12-30-97, 4-2-00.*

**12B-4.006 Excise Tax on Documents; Construction.**

(1) Florida Documentary Stamp Act, being similar to the Federal Act, takes the same construction in Florida courts as is given the Federal Act in the Federal courts. (State v. Cook, 108 Fla. 157, 146 So. 223 (1933); Gay v. Inter-County Tel. & Tel. Co., 60 So. 2d 22 (Fla. 1952))

(2) All sections of the Documentary Stamp Tax Law must be construed together in order to arrive at intent of legislature. (Gay v. Inter-County Tel. & Tel. Co., 60 So. 2d 22 (Fla. 1952))

(3) Chapter 201, F.S., which levies and imposes excise tax on documents and contains penal provisions must be strictly construed and all doubts or ambiguities resolved in favor of taxpayer. (State v. Cook, 108 Fla. 157, 146 So. 223 (1933); Metropolis Pub. Co. v. Lee, 126 Fla. 107, 170 So. 442 (1936); Lee v. Quincy State Bank, 127 Fla. 765, 173 So. 909 (1937))

(4) Tax on promissory notes and each renewal thereof is on a written or printed obligation covered by statute, and to be “note” or “obligation” within statute; it must be signed by maker or other obligor. (Lee v. Quincy State Bank, 127 Fla. 765, 173 So. 909 (1937))

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201 FS. History–Revised 8-18-73, Formerly 12A-4.06, 12B-4.06, Amended 12-5-89, 12-30-97.*

**12B-4.007 Recordation of Documents.**

The following information pertains to the recordation of documents requiring tax under Chapter 201, F.S.

(1) All instruments should be examined by the clerk, or his deputy before recording.

(2) All instruments shall be properly taxed prior to recordation.

(3) In order to protect his rights, it shall be the duty of the owner and holder of the deed, mortgage, or other document, within the recording laws of this State, to see to it that proper amount of stamp taxes are attached thereto prior to recording.

(4) The duty of a Clerk of a Circuit Court to see to it that proper stamp taxes are paid prior to a recording of the document is an incidental and not a primary duty; his failure to require the proper amount of stamp taxes prior to recording will in no way protect the owner or holder of the document against the effects of a failure to pay the proper tax thereon.

(5) In order to avoid a controversy at a later date as to the consideration upon which the tax was paid, the clerk may, at the time of recording, make a notation on the margin of the instrument as to the consideration. (1961 Op. Att’y. Gen. Fla. 061-188 (Dec. 8, 1961))

*Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.01, 201.022, 201.12 FS. History–Revised 8-18-73, Formerly 12A-4.07, 12B-4.07, Amended 12-29-86, 12-5-89, 2-16-93, 12-30-97, 4-14-09.*

**12B-4.011 Imposition of Tax.**

(1) Scope of Tax: Section 201.02, F.S., imposes a tax on deeds, instruments, or writings, whereby any lands, tenements, or other realty, or any interests therein is granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person by his direction. The tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made. Deeds deposited in escrow become subject to the tax upon delivery to the grantee.

(2) Taxable Conveyances: Tax must be paid on all taxable conveyances regardless of where the document may be made, executed, or delivered. (1932 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 979 (May 20, 1932))

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.02 FS. History–Revised 8-18-73, Formerly 12A-4.11, Amended 11-29-79, Formerly 12B-4.11, Amended 12-5-89, 12-30-97.*

**12B-4.012 Rate, Consideration.**

(1) Documentary Stamps; Rate, Computation: Effective August 1, 1992, the tax under Section 201.02, F.S., on deeds, instruments, documents, or writings whereby any lands, tenements, or other realty or any interest therein is transferred or conveyed is 70 cents on each $100 or fractional part thereof of the consideration paid, or to be paid. When the full amount of the consideration is not shown in the face of such deed, instrument, document, or writing, the tax shall be at the rate of 70 cents on each $100 or fractional part thereof of the consideration therefor. The 70 cent rate applies except for any county that has implemented the provisions of Section 201.031, F.S. As of August 1, 1992, this would apply only to Dade County, where the rate of 60 cents applies.

(2) Definitions:

(a) “Consideration” under Section 201.02, F.S., includes, but shall not be limited to, money paid or to be paid, the amount of any indebtedness discharged by a transfer of any interest in real property, mortgage indebtedness and other encumbrances which the real property interest being transferred is subject to, notwithstanding the transferee may be liable for such indebtedness. Where property other than money is exchanged for interests in real property, there is the presumption that the consideration is equal to the fair market value of the real property interest being transferred.

(b) “Property other than money” includes, but shall not be limited to, property that is corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate.

(3) Discretionary Surtax, Rate and Computation: Certain charter counties, as defined in Section 125.011, F.S., are authorized to levy a surtax pursuant to Section 201.031, F.S., on the same documents taxed under Section 201.02, F.S. The rate of tax shall not exceed 45 cents for each $100 or fractional part thereof of the consideration paid or to be paid. However, a document conveying only a single family residence, which shall include a condominium unit, or a cooperative apartment unit representing a proprietary interest in a corporation owning a fee or leasehold interest initially in excess of 98 years, or a detached dwelling is not taxable. Where a document conveys more than one single-family residence the tax is due.

(4) Consideration – Surtax: The term “consideration” under Section 201.031, F.S., includes but is not limited to those terms in subsection (2) of this section.

(5) Interest: Even though the parties to the transaction term the total of annual payments as the “total consideration” for the conveyance or transfer, it is only the total of the principal amounts that is liable for the documentary stamp tax under Section 201.02, F.S., and the amounts set forth as interest are exempt from such tax. (1971 Op. Att’y. Gen. Fla. 071-30 (Feb. 19, 1971)) The same rule is applicable to the surtax levied under Section 201.031, F.S.

(6) Minimum Tax: The minimum tax is required on all conveyances where a nominal consideration such as “ten dollars and other valuable considerations, etc.”, is cited in the document even though such statement may be impeached by competent evidence. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 855 (Nov. 30, 1931); Letter from Att’y. Gen. Fla. to State Comptroller (Dec. 10, 1962))

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.02, 201.031 FS. History–Revised 8-18-73, Formerly 12A-4.12, Amended 2-21-77, 8-8-78, 11-29-79, 12-30-82, Formerly 12B-4.12, Amended 12-5-89, 2-13-91, 2-16-93, 12-30-97.*

**12B-4.013** **Conveyances Subject to Tax.**

(1) Exchange of Property: In an exchange of real property by the respective owners of the property exchanged, lands are given as consideration for the transfer of other lands between the parties. The consideration has a reasonably determinable value, (DeVore v. Gay, 39 So. 2d 796 (Fla. 1949)) and is property other than money. The consideration for each deed is the fair market value of the property transferred up by the transferor plus any other consideration given.

(2) Defaulting Mortgagor: Where a mortgagor, in full or partial satisfaction of the mortgage indebtedness or in lieu of foreclosure of a mortgage, conveys the mortgaged premises to the mortgagee, documentary stamp taxes are due on the transaction. The tax will be due on the unpaid portion of any mortgages or other encumbrances the property is subject to, plus any other consideration as defined in Section 201.02(1), F.S., including accrued interest.

(3)(a) Clerk of the Court, Master, Sheriff. A conveyance by a master in chancery, a sheriff, or a clerk of the court for realty sold under foreclosure or execution is subject to tax. The tax is computed on the amount of the highest and best bid received for the property at the foreclosure sale. The Clerk of the Court is required to collect the tax from the highest bidder when the Certificate of Title is recorded.

(b) The documentary stamp taxes cannot reduce the claim of the mortgagee when the mortgagee is an agent of the federal government. The mortgagor is liable for the payment of the tax from any funds paid to the mortgagor after the payment of prior claims of, or in connection with the foreclosure. (1960 Op. Att’y. Gen. Fla. 060-125 (July 29, 1960))

Cross Reference – subsection 12B-4.013(6), F.A.C.

(4) Eminent Domain Proceedings, Threat of: Conveyances of realty made to a governmental entity under threat of condemnation or as part of an out-of-court settlement of condemnation proceedings are not subject to documentary stamp tax. Threat of condemnation exists when a property owner is informed in writing by a representative of a governmental body or public official authorized to acquire property for public use, that such body or official has decided to acquire the property and the property owner has reasonable grounds to believe that the necessary steps to condemn the property will be instituted if a voluntary sale is not arranged. Conveyances to nongovernmental entities are subject to tax.

Cross-Reference – subsection 12B-4.014(13), F.A.C.

(5) State, County, Municipality: Conveyance to or by the state, a county, a municipality or other public agency to or by a non-exempt party is subject to tax. The state, county, municipality or other public agency is exempt from payment of tax but the non-exempt party is not exempt. (1936 Op. Att’y. Gen. Fla. 1935-36 Biennial Report, Page 29 (April 10, 1936); 1962 Op. Att’y. Gen. Fla. 062-150 (Nov. 8, 1962); 1968 Op. Att’y. Gen. Fla. 068-10 (Jan. 19, 1968); 1971 Op. Att’y. Gen. Fla. 071-100 (May 12, 1971))

Cross Reference – subsection 12B-4.002(3), F.A.C.

(6) United States, Its Agencies or Instrumentalities: Conveyance to the United States, its agencies or instrumentalities from non-exempt party, except as provided in subsection 12A-4.014(11), F.A.C., is subject to tax. (1960 Op. Att’y. Gen. Fla. 060-125 (July 29, 1960); 1961 Op. Att’y. Gen. Fla. 061-84 (May 19, 1961); 1961 Op. Att’y. Gen. Fla. 061-122 (Aug. 1, 1961); 1965 Op. Att’y. Gen. Fla. 065-59 (July 15, 1965); 1971 Op. Att’y. Gen. Fla. 071-100 (May 12, 1971))

(7) Timber, Oil, Gas, and Mineral – Contracts or Assignments: Contracts, agreements, leases, and other documents conveying any interest in standing timber, pine stumps, oil or gas leases and assignments or conveyances of oil, gas, mineral rights or royalty interests affecting lands in this state are subject to tax. (1945 Op. Att’y. Gen. Fla. 045-328 (Oct. 19, 1945); 1950 Op. Att’y. Gen. Fla. 050-140 (Mar. 22, 1950); 1962 Op. Att’y. Gen. Fla. 062-114 (Aug. 29, 1962); 1971 Op. Att’y. Gen. Fla. 071-30 (Feb. 19, 1971))

(8) Cooperative Units: Instruments by which the right is granted to a tenant-stockholder to occupy a unit owned by a cooperative corporation are subject to tax.

Cross Reference – subsection 12B-4.011(2), F.A.C.

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

(10) Cemetery Lots, Interment Rights, Sepulcher Rights: Documents conveying cemetery lots, interment rights, sepulcher rights or any other interest in realty are subject to tax. (1932 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 1000 (June 11, 1932); 1970 Op. Att’y. Gen. Fla. 070-169 (Dec. 4, 1970))

(11) Easements: Easements constitute transfers of interest in realty are subject to tax. (Letter from Att’y. Gen. Fla. to State Comptroller (April 15, 1932))

(12) Banks: Conveyances executed to or by State or National banks are subject to tax.

(13) Savings and Loan Associations: Conveyances executed to or by savings and loan associations are subject to tax.

(14) Agreement or Contract for Deed: Consideration for the conveyance of an equitable interest in real property pursuant to an agreement or contract for deed includes the amount of any payments made and the unpaid balance of the agreement or contract. Tax is therefore calculated on the full contract price and tax shall be paid on the contract when made. No stamp tax is due on the recorded deed made when the proper amount of taxes have been paid on the contract. The deed shall indicate, by notation on the contract, that the proper amount of stamp tax has been paid. The agreement may also be subject to tax under Section 201.08, F.S. (1959 Op. Att’y. Gen. Fla. 059-244 rev. (Feb. 25, 1960); 1970 Op. Att’y. Gen. Fla. 070-171 (Dec. 8, 1970))

(15) Cancellation of Contract or Agreement for Deed: A conveyance of the purchaser’s interest to the seller in satisfaction of the purchaser’s obligation under a contract or agreement for deed where the indebtedness of the purchaser is canceled or otherwise rendered unenforceable is subject to tax. The measure of the tax payable is determined by the amount of the indebtedness canceled or otherwise rendered unenforceable and any other consideration given by the seller. (1960 Op. Att’y. Gen. Fla. 060-165 (Oct. 11, 1960))

Cross Reference – subsection 12B-4.014(12), F.A.C.

(16) Assignment of Contract for Deed: The assignment of a prior purchaser’s interest under a contract or agreement for deed to a new purchaser is a conveyance of an equitable interest which the prior purchaser had in the real property. Consideration for the transfer includes the amount paid by the new purchaser and the unpaid balance of the contract for deed. Tax is due based on the total consideration. No stamp tax is due on the recorded deed when the proper amount of tax has been paid on the assignment. The deed shall indicate by notation that proper stamp tax has been paid. Tax is also due under Section 201.08, F.S., if the remaining balance of the contract is assumed by the new purchaser. (1959 Op. Att’y. Gen. Fla. 059-244 Rev. (Feb. 25, 1960); Department of Revenue v. Mesmer, 345 So. 2d 384 (Fla. 1st DCA 1977))

(17) Industrial Development Authority and Florida Housing Finance Corporation: Conveyances of realty by industrial development authorities and the Florida Housing Finance Corporation to private corporations are taxable.

Cross Reference – subsection 12B-4.054(26), F.A.C.

(18) Gift Transactions; Mortgage on Property: A gift of mortgaged realty is taxable based upon the unpaid balance of the mortgage at the time of transfer.

(19) Combined Sale of Land and Improvements: Where conveyance of realty is made by a corporation or person engaged in the business of land sales and construction of buildings and other improvements, stamp tax is imposed on the conveyance based on the amount of consideration paid or to be paid upon delivery of the deed to the purchaser. If the deed is not delivered to the purchaser until construction is completed, stamp tax is required on the total consideration paid for the land and improvements, regardless of the date of recordation. However, proper stamp tax shall be paid when the deed is recorded.

(20) “Wrap-Around” Mortgages: Where a “wrap-around” mortgage is given to secure the unpaid balance of the purchase price for the transfer of realty, documentary stamp tax is to be paid on the total consideration which shall include the amount of any “wrap-around” mortgage. (Department of Revenue v. Brookwood Associates, Limited, 324 So. 2d 184 (Fla. 1st DCA 1975))

(21) 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 (31), F.A.C.

(22) Mobile Homes: A mobile home which has been permanently affixed to land and taxed as real property is issued an “RP” series license plate by the appropriate county tax collector. Tax applies to the sale of mobile homes in the following manner:

(a) When a mobile home is affixed to realty, bears an “RP” license tag and is sold in conjunction with the sale of realty as a package deal, the transaction constitutes the transfer of an interest in real property and is taxable under Chapter 201, F.S., and the instrument by which the interest in real property is transferred must evidence payment of documentary stamp tax and surtax levied under Chapter 201, F.S., based upon the consideration paid.

(b) When a mobile home is affixed to realty and bears an “MH” tag or is untagged, the sale of the mobile home does not constitute the transfer of an interest in real property even though the land is sold in conjunction with the mobile home. However, the land which is sold in conjunction with the sale of the mobile home is taxable under Chapter 201, F.S., based upon the fair market value of the land conveyed and the instrument by which the interest in the real property is conveyed must evidence payment of documentary stamp tax and surtax levied under Chapter 201, F.S., based upon the consideration paid.

(c) Where members of a mobile home park have practical dominion over designated sites on which a mobile home is located which is essentially equivalent to ownership, each member’s interest in the site on which his home is affixed constitutes “ownership” rendering mobile homes taxable as real property. Therefore, any instruments transferring interest, ownership or membership in a site owned by a cooperative mobile home corporation are subject to tax. Mikos v. King’s Gate Club, Inc., 426 So. 2d 74 (Fla. 2nd DCA, 1983); Nordbeck v. Williamson, 529 So. 2d 360 (Fla. 2nd DCA 1988).

(23) Assignment of Lease or Other Conveyance of Leasehold Interest in Realty: All assignments of leases or other conveyances of leasehold interests in real property are taxable under Section 201.02, F.S., based upon the consideration paid, including leasehold mortgages encumbering the interest conveyed. However, mortgages encumbering the fee title are not consideration, except when assumed by the assignee.

(24) Assignment of Successful Bid – An interest in realty transferred or conveyed by assignment of successful bid at a foreclosure sale is taxable under Section 201.02, F.S.

(25) Assignment of Beneficial Interest in Trust created under Chapter 689, F.S.: Effective July 3, 1979, any document which conveys any beneficial interest in a trust agreement is subject to tax, and the tax is to be paid upon execution of the document. The provision in Section 689.071(4), F.S., which defines the interest of a beneficiary under a trust agreement to be personal property only, does not exempt a transfer of the beneficial interest in the trust from documentary stamp tax. Tax is due on any assignment of a beneficial interest in a trust created under Chapter 689, F.S., based on the consideration paid for such assignment.

(26) Construction Mortgage: When realty is conveyed subject to a construction mortgage, the deed is subject to tax based upon the unpaid balance of the mortgage debt at the time of conveyance, in addition to any other consideration given.

(27) 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. However, no tax is due on a deed executed on or after July 1, 1997, between spouses or former spouses at the time of divorce. This exemption does not apply to any transfer of real property other than the marital home. For the purpose of this rule, marital home means the primary residence of the married couple. Thus, for example, a document that conveys any interest in another residence or investment property is taxable. The tax should be paid on any real property transfers recorded prior to the final divorce decree. After July 1, 1997, an application for refund must be filed within one year of the final divorce decree to request the tax paid on a deed that conveyed the marital home. To request a refund, a completed Form DR-26, Application for Refund, must be submitted with proof of payment of the tax, including a copy of the final divorce decree. Proof that the real property was the marital home is also required. [See Footnote [[1]](#footnote-1)]

(28) Trusts Pursuant to Chapter 689, F.S.: A deed to or from a trustee conveying real property is taxable to the extent that the deed transfers the beneficial ownership of the real property and to the extent that there is consideration for the transfer. The following are examples of taxable and exempt conveyances to or from a trustee.

(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.

(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.

(c) Gift in Trust: A deed from X to a trustee is exempt from the stamp tax if persons other than X are trust beneficiaries, the transfer is a gift from X to those beneficiaries, and the real property is not encumbered by any mortgage. If the real property is encumbered by any mortgage, then the stamp tax is based on the other beneficiaries’ proportionate share of the mortgage indebtedness allocated according to their respective percentage beneficial interest. For example, if X owns real property valued at $100 which is encumbered by a mortgage of $50 and X conveys the property to the trustee of a trust of which X and X’s daughter are each 50% beneficiaries, and there is no consideration other than the mortgage, then stamp tax would be due based on a consideration of $25 (one-half of the mortgage indebtedness).

(d) Successor or Substitute Trustee: A deed from a trustee to a successor or substitute trustee of the same trust is not subject to the stamp tax.

(e) Trustee’s Deed to Beneficiary: A deed of real property from a trustee to X is not subject to the stamp tax to the extent of X’s beneficial ownership interest as a trust beneficiary immediately before the conveyance, whether or not the real property is encumbered by a mortgage. Except as provided in paragraph (f) of this rule below, however, the stamp tax applies to the extent that the trustee transfers to X an ownership interest in the real property greater than X’s percentage beneficial ownership interest as a trust beneficiary immediately before the transfer, based on the consideration, if any, for the transfer of the additional interest, including the proportionate share of any mortgage indebtedness encumbering the additional percentage interest in the real property transferred to X by the trustee. For example, if X and X’s spouse are each beneficiaries of a trust of which X owns 60% interest and X’s spouse owns 40% interest and the trustee conveys to X real property valued at $100 which is encumbered by a mortgage of $50, and there is no consideration other than the mortgage, then stamp tax would be due based on a consideration of $20 (40% of the mortgage indebtedness).

(f) Trustee’s Power to Apportion: When trust beneficiaries hold undivided percentage interests in the corpus of the trust rather than specific interests in each parcel of real property held in the trust, and a trust instrument grants the trustee the power to apportion and distribute the various assets of the trust among the beneficiaries, then stamp tax is due on the conveyance of real property from the trustee to a beneficiary only to the extent that the value of that real property exceeds the value of the beneficiary’s undivided percentage interest in the trust. For example, a grantor conveys Blackacre and Whiteacre to a trustee for the benefit of the grantor’s two children, X and Y, who each have an undivided 50% interest in the trust. The terms of the trust provide that when both X and Y reach 21 years of age, the trustee will liquidate the trust and distribute the assets of the trust between X and Y as the trustee shall determine provided that each beneficiary shall receive property of approximately equal value. Blackacre and Whiteacre are equal in value when X and Y reach 21, and the trustee conveys Blackacre to X and Whiteacre to Y. Stamp tax is due on the initial conveyance from the grantor to the trustee to the extent of any taxable consideration, such as a mortgage on the property (see foregoing paragraph (c) of this rule), but no stamp tax is due on the subsequent conveyances from the trustee to X and Y, regardless of whether any mortgage then encumbers the property.

(g) Trustee’s Deed to Non-Beneficiary: The stamp tax applies to a trustee’s deed of real property to grantees that are not beneficial owners as trust beneficiaries immediately before the conveyance, to the extent of the consideration given, if any, for the interest in the real property transferred to the non-beneficiary grantees. The stamp tax is based on any cash, note, release or other consideration from the non-beneficiary grantees, including their proportionate share of any mortgage encumbering the real property. For example, if X is the sole beneficiary of a trust and the trustee conveys to X and Y, as 50% tenants-in-common, real property valued at $100 which is encumbered by a mortgage of $60, and Y pays $20 cash for Y’s 50% interest in the property, then stamp tax would be due based on the consideration of $50 ($20 cash plus 50% of the mortgage indebtedness).

(h) Identity of Parties; Nature of Trust: All conveyances to or from a trustee are equally taxable or exempt as provided in this rule, regardless of:

1. Whether the trustee is the same person as grantor, grantee, or beneficiary,

2. Whether the trustee or grantor or grantee or beneficiary is a natural person or an entity, and,

3. Whether a recorded instrument confers on the trustee the powers and authority specified in Section 689.071(1), F.S., or declares the interest of the beneficiaries is personal property as specified in Section 689.071(4), F.S.

(i) Revocable Trust: A deed to a trustee from a grantor who has the power to revoke the trust instrument, and a deed back to the grantor from the trustee upon revocation of the trust, are not transfers of ownership subject to the stamp tax.

*Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.02 FS. History–New 8-18-73, Formerly 12A-4.13, Amended 12-11-74, 2-21-77, 5-23-77, 12-26-77, 7-3-79, 9-16-79, 11-29-79, 3-27-80, 12-23-80, 12-30-82, Formerly 12B-4.13, Amended 12-5-89, 6-4-90, 2-13-91, 2-16-93, 10-18-94, 12-30-97, 7-28-98, 1-4-01, 5-4-03, 4-5-07, 7-30-13.*

**12B-4.014** **Conveyances Not Subject to Tax.**

(1) Security for Debt: The reconveyance of realty conveyed to secure a debt upon payment of such debt is not taxable.

(2) No Consideration:

(a) A conveyance of unencumbered realty as a gift is not taxable.

(b) A deed of conveyance reciting a consideration such as “love and affection and $1,” “desire to promote welfare and $1,” or “$1 and other valuable consideration,” requires at least the minimum tax.

(3) To Correct Error: Where a conveyance is made to correct a deficiency in a previous deed on which the tax has been paid, only minimum tax is required. (1933 Op. Att’y. Gen. Fla. 1933-34 Biennial Report, Page 50 (April 7, 1933); Letter from the Att’y. Gen. Fla. to State Comptroller (Dec. 10, 1962))

(4) Personal Representative’s Deed: A deed given by a personal representative in accordance with the terms of a will is not taxable, including any term of the will that authorizes the personal representative to allocate and convey different parcels to different devisees instead of conveying undivided interests in each parcel. However, if a devisee takes a greater share in the realty than that to which the devisee is entitled under the will, the deed given by the personal representative to convey such greater share is subject to a tax computed upon the amount of any consideration given.

(5) Agent to Principal: A deed from an agent to his principal conveying real estate purchased for and with funds of the principal is not taxable.

(6) Partition Deed: Partition deed is not taxable, unless for consideration, some of the parties take shares greater in value than their undivided interest, in which event a tax attaches to each deed conveying such greater share computed upon the consideration for the excess. Where the property being partitioned is subject to a mortgage, tax shall be based on the mortgage balance in proportion to the identical interest which the grantor held in the property as of the date of transfer.

(7) Leases of Real Property: Leases wherein considerations passing to lessors are lessee’s promises in future to pay rent are not subject to documentary stamp tax imposed since considerations passing to lessors are executory. (DeVore v. Gay, 39 So. 2d 796 (Fla. 1949))

Cross Reference – subsection 12B-4.013(24), F.A.C.

(8) United States to Non-Exempt Party: The United States or its agencies are exempt from payment of the tax and unless the instrument is exempted by any state or federal law, the required tax is the responsibility of the non-exempt party.

Cross Reference – subsection 12B-4.002(2), F.A.C.

(9) Mortgagee to United States; Contract of Guaranty: Conveyance from bank, savings and loan association or other mortgagee to federal agency pursuant to a contract of guaranty is not taxable. (1961 Op. Att’y. Gen. Fla. 061-46 (Mar. 14, 1961); 1961 Op. Att’y. Gen. Fla. 061-84 (May 19, 1961); 1961 Op. Att’y. Gen. Fla. 061-122 (Aug. 1, 1961))

(10) Conveyances Between Governmental Agencies: Conveyances from federal or state agencies or their instrumentalities to another agency or instrumentality of the state or federal government are not taxable. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 892 (Dec. 16, 1931); 1936 Op. Att’y. Gen. Fla. 1935-36 Biennial Report, Page 29 (Apr. 10, 1936))

Cross Reference – subsection 12B-4.002(4), F.A.C.

(11) Conveyances Exempted by United States Code: Conveyances to the United States or its agencies or its instrumentalities when exempted from tax by the United States Code are not taxable. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 281 (Nov. 9, 1931); 1947 Op. Att’y. Gen. Fla. 047-164 (June 11, 1947))

Cross Reference – paragraph 12B-4.002(2)(a), F.A.C.

(12) Cancellation of Non-Recourse Agreement for Deed: Quit claim deeds from a buyer to a seller for failure to make payments under a contract for deed where the buyer is not entitled to possession until he completes all the payments and has no personal liability upon default, are not subject to tax.

(13) Eminent Domain Proceeding: Judgments and decrees in eminent domain proceedings by which title to real property is vested in a condemner are not subject to documentary stamp tax. Also a deed given to a governmental entity under threat of condemnation or as a part of an out-of-court settlement of condemnation proceedings is not subject to tax.

Cross Reference – subsection 12B-4.013(4), F.A.C.

(14) An assignment, transfer, or other disposition of real property from a nonprofit organization, as defined in Section 201.02(6), F.S., to any state agency, water management district, or local government is exempt from tax. The exempt status of the document must be indicated by affixing the statement that is provided in label format on Form DR-229. (Documentary Stamp Tax – Section 201.02(6), F.S., Exemption, incorporated by reference in Rule 12B-4.003, F.A.C.)

(15) Confirmed Bankruptcy Plan: A document that transfers an interest in Florida real property pursuant to a Chapter 11 plan that was confirmed under Section 1129 of the Bankruptcy Code (Title 11 U.S.C.) prior to the date of the transfer is not taxable. A document that transfers Florida real property prior to confirmation of the bankruptcy plan is subject to tax. (11 U.S.C. Section 1146(a); Florida Department of Revenue v. Piccadilly Cafeterias, Inc. 554 U.S 33 (2008))

[See Footnote for additional 2018 Exemptions][[2]](#footnote-2)

*Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.02 FS. History–New 8-18-73, Formerly 12A-4.14, Amended 2-21-77, 12-26-77, 12-23-80, Formerly 12B-4.14, Amended 12-5-89, 6-4-90, 2-13-91, 2-16-93, 10-18-94, 12-30-97, 1-4-01, 4-14-09, 7-30-13.*

**12B-4.041 Imposition of Tax.**

(1) Scope of Tax: Section 201.07, F.S., imposes a tax on all bonds, debentures, or certificates of indebtedness issued in the state by any person, and all instruments and documents, however termed, issued by any corporation with interest coupons or in registered form.

(2) Rate and Computation: The rate of tax on bonds is 35 cents on each $100 or fraction thereof of the face value provided, however, that only that part of the value of the bonds, debentures or certificates of indebtedness issued by any person, the property of which is located within the state, shall bear to the whole value of the property described in said instrument or obligation shall require tax. Tax on bonds is measured by the face value regardless of whether sold at discounted prices. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 835 (Sept. 29, 1931)) However, bonds which are secured by mortgages or trust deed recorded in this state are subject to the provisions of Section 201.08(1), F.S., and the tax is required to be paid on the mortgage or trust deed.

Cross Reference – subsection 12B-4.053(8), F.A.C.

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.07 FS. History–Revised 8-18-73, Formerly 12A-4.41, Amended 12-26-77, Formerly 12B-4.41, Amended 12-5-89, 2-13-91, 2-16-93, 12-30-97.*

**12B-4.042 Issues Subject to Tax.**

(1) Secured by Mortgage or Deed of Trust: A bond secured by a mortgage or deed of trust which is recorded in this state is subject to tax.

(2) Religious Non-Profit Corporation: A bond issued by a church corporation is subject to tax. (1932 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 396 (Jan. 7, 1932))

(3) Certificate of Indebtedness: A certificate of indebtedness secured by a mortgage is subject to tax. (Letter from the Att’y. Gen. Fla. to the State Comptroller (March 17, 1932))

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.07 FS. History–Revised 8-18-73, Formerly 12A-4.42, Amended 12-26-77, Formerly 12B-4.42, Amended 12-5-89, 12-30-97.*

**12B-4.043 Issues Not Subject to Tax.**

(1) Assignment of Bond: An instrument merely representing an assignment of a bond is not taxable.

(2) Surety Bonds: Indemnity, fidelity, and surety bonds are not taxable. (1944 Op. Att’y. Gen. Fla. 044-356 (Dec. 6, 1944))

(3) Subdividers Bonds: A bond given by subdividers of real estate in connection with approval of a subdivision by Board of County Commissioners conditioned that should the makers of such bond construct streets, alleys and thoroughfares as promised the bonds would become null and void, otherwise to remain in full force and effect, is not subject to the documentary stamp tax. (1949) Op. Att’y. Gen. Fla. 049-583 (Dec. 7, 1949))

(4) Issued in Another State: Where all steps in the issuance of bonds by Florida corporation took place out of the state, the transaction is not taxable. (State v. Gay, 90 So. 2d 132 (Fla. 1956)). However, where bonds are secured by a mortgage or trust deed recorded in this state, the mortgage or trust deed is taxable.

(5) Governmental Bonds: All notes, bonds, mortgages, deeds and other evidences of indebtedness issued, sold, transferred, assigned or delivered by any State, County, or subdivision thereof, or municipality, all being Governmental agencies, are exempt from the documentary stamp tax. This also applies to such documents and instruments issued by the Federal Government and its agencies. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 889 (Dec. 8, 1931))

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.07 FS. History–Revised 8-18-73, Formerly 12A-4.43, Amended 12-26-77, Formerly 12B-4.43, Amended 12-5-89, 12-30-97.*

**12B-4.051 Imposition of Tax.**

(1) A tax is imposed on promissory notes, non-negotiable notes, written obligations to pay money, assignments of salaries, wages, or other compensation, which are made, executed, delivered, sold, transferred, or assigned in the state. A renewal note, as defined in Section 201.08(5), F.S., is also taxable unless it qualifies for the exemption provided for under Section 201.09(1), F.S. The rate of tax is 35 cents on each $100 or fraction thereof of the indebtedness or obligation evidenced by the document. The tax on any document described in this paragraph shall not exceed $2450.

Cross Reference – paragraph (12)(e) of Rule 12B-4.052, F.A.C.

(2) Mortgages that incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are taxable. Furthermore, a mortgage, trust deed, security agreement, or other evidence of indebtedness filed or recorded in this state which secures a promissory note or written obligation to pay money at the time of recordation is also taxable. A notation shall be made on the promissory note or written obligation to pay money, at the time of recordation, that the proper tax, and the amount thereof, has been paid on the mortgage, trust deed, security agreement, or other evidence of indebtedness. A renewal mortgage, trust deed, security agreement, or other evidence of indebtedness, as defined in Section 201.08(5), F.S., is also taxable unless it qualifies for the exemption provided under Sections 201.09(2) and 201.091, F.S. The rate of tax is 35 cents on each $100 or fraction thereof of the indebtedness or obligation evidenced thereby. The $2450 tax limit placed on a note or other written obligation to pay money, executed in Florida or approved and accepted in Florida, does not apply to a mortgage, security agreement, or other lien filed or recorded in Florida. A mortgage, security agreement, or other lien filed or recorded in Florida is subject to documentary stamp tax on the full amount of the obligation secured thereby. Example: A term obligation of $1,000,000 was executed in Florida on July 1, 2002. A mortgage securing the full amount of the obligation was recorded in Florida on that same date. Documentary stamp tax in the amount of $3500 was due on the mortgage at the time of recordation.

Cross Reference – paragraph (12)(e) of Rule 12B-4.052, F.A.C.

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.08 FS. History–Revised 8-18-73, Formerly 12A-4.51, Amended 8-8-78, 11-29-79, Formerly 12B-4.51, Amended 12-5-89, 2-13-91, 2-16-93, 12-30-97, 7-28-98, 5-4-03.*

**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 $2450 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 $2450 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 $2450. An obligation upon which the maximum tax due of $2450 was paid may be renewed, so long as the requirements of Section 201.09(1), F.S., are met, without additional tax assessed. The $2450 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 $2450 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 $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, 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 $2450. 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 $2100. 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 $2450).

4. Example: The proper amount of tax of $2450 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 $1750 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 $2450.

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 $2450.

3. A renewal note is subject to tax on the full amount of the obligation, with a maximum tax due of $2450, 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 $2450, 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; or

7. Substitute a new mortgagee or payee.

(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)).

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.08, 201.09 FS. History–Revised 8-18-73, Formerly 12A-4.52, Amended 8-8-78, 3-12-79, 2-3-80, 3-30-81, 8-29-84, Formerly 12B-4.52, Amended 12-5-89, 2-13-91, 10-18-94, 12-30-97, 7-28-98, 1-4-01, 5-4-03.*

**12B-4.053 Taxable Documents.**

(1) Signature Required: Tax is on “Promise to Pay” and each renewal thereof and to be “note or obligation” it must be signed by the maker or obligor to be taxable. (Lee v. Quincy State Bank, 127 Fla. 765, 173 So. 909 (1937))

(2) Purported Lease:

(a) An instrument which purports to be a lease, whereby title to tangible personal property remains vested in the seller, until the total of the payment of rentals equals the value of the property leased at which time “lessee” becomes the unconditional owner of the property, is a “mortgage” and is subject to tax, even though payment of the rentals is not an unconditional obligation to pay money.

(b) A lease of tangible personal property containing a written unconditional obligation to pay money is subject to tax.

(3) Note Executed in Florida: A note mailed to a bank in another state and payable in that state is taxable where the note is made in Florida, the loan is used in Florida, and the loan is in all essential factors a Florida transaction. (Plymouth Citrus Growers Ass’n v. Lee, 157 Fla. 893, 27 So. 2d 415 (1946))

(4) Executed to Governmental Agencies or Instrumentalities: Instruments made payable to United States, its agencies or instrumentalities (Choctawhatchee Electric Cooperative, Inc. v. Green, 132 So. 2d 556 (Fla. 1961)) or to the state, counties, municipalities or any political subdivision of the state are taxable to the nonexempt party unless the instrument is exempt by federal or state law. (1962 Op. Att’y. Gen. Fla. 062-150 (Nov. 8, 1962); 1963 Op. Att’y. Gen. Fla. 063-131 (Nov. 4, 1963); 1968 Op. Att’y. Gen. Fla. 068-10 (Jan. 19, 1968); 1970 Op. Att’y. Gen. Fla. 070-169 (Dec. 4, 1970); 1970 Op. Att’y. Gen. Fla. 070-171 (Dec. 8, 1970); 1971 Op. Att’y. Gen. Fla. 071-100 (May 12, 1971))

(5) Right to Rescind: Lot purchase contracts in existence beyond a stated period of time without having been rescinded by purchaser as provided for in the terms of the contract, constitute “written obligations to pay money” subject to documentary stamp tax, but contracts rescinded by purchasers within the stated time period are not subject to tax. (Gulf American Land Corporation v. Green, 157 So. 2d 70 (Fla. 1963))

(6) “Add-On” or Supplemental Agreement: A written obligation to pay money whereby the purchaser promises to pay the vendor a certain sum of money to cover the purchase price of itemized merchandise purchased from the vendor requires documentary stamp tax for the full amount of the purchase. When a supplemental agreement, either separate or as part of the original agreement is used for the purchase of additional merchandise and the supplemental agreement embodies the terms of the original agreement by reference or otherwise to cover the additional merchandise purchased, then this supplemental agreement must bear documentary stamp tax in an amount to cover the amount of the original agreement plus the amount of the supplemental agreement. (1940 Op. Att’y. Gen. Fla. 0-1021, (Dec. 16, 1940))

(7) Certified Check: The certification of a check by a bank is subject to tax. The certification is equivalent to an acceptance. The bank upon certification becomes liable to the holder. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 831 (Sept. 24, 1931); 1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Reports, Page 845 (Oct. 15, 1931))

(8) Chattel Mortgage: A chattel mortgage or conditional bill of sale, which contains in the body of the contract or mortgage the promise to pay not evidenced by a separate note or writing shall bear the required documentary stamp tax. If there is a separate promissory note evidencing the indebtedness, and a recorded chattel mortgage which is security for such note, the tax is to be paid on the recorded document at the time of recordation and a notation of the stamps and the amount thereof made on the promissory note.

(9) Document Signed in Another State; Payable in Florida: Where a promissory note is signed by its maker in another state and mailed to the payee in this state, after which it is examined, approved and accepted and a loan in the principal amount of the note is made to the maker, such note is subject to tax. (1956 Op. Att’y. Gen. Fla. 056-339 (Dec. 7, 1956); (1958 Op. Att’y. Gen. Fla. 058-106 (March 25, 1958); (1962 Op. Att’y. Gen. Fla. 062-11 (Jan. 18, 1962))

(10) Credit Unions: “Promise to Pay” given to either state or federally chartered credit unions is subject to tax. (1956 Op. Att’y. Gen. Fla. 056-247 (Aug. 22, 1956))

Cross Reference – subsection 12B-4.054(23), F.A.C.

(11) Demand Loans: Forms used by banks in making so-called “demand loans” which contain a written obligation to pay money are subject to the documentary stamp tax based upon the full amount of the demand loan, with a maximum tax due of $2450. (1941 Op. Att’y. Gen. Fla. 041-677 (Dec. 5, 1941))

(12) Minimum Tax: All “promises to pay”, unless the document is wholly exempt, must bear the minimum tax even though the debt is less than $100. (State v. Cook, 108 Fla. 157, 146 So. 223 (1933))

(13) Banks, Savings and Loan Associations: Notes or other written obligations to pay money executed by national or state banks and state or federal chartered savings and loan associations are subject to tax.

(14) Religious or Non-Profit Church Corporation: “Promise to pay” executed by religious bodies or non-profit corporations is subject to tax. (1932 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 396 (Jan. 7, 1932))

(15) Retain Title Contracts: Where under a contract the purchaser agrees to pay a certain price upon certain terms, the title to the property to remain in the seller until the contract price is paid in full, such contract constitutes an obligation to pay money and is taxable. (1933 Op. Att’y. Gen. Fla. 1933-34 Biennial Report, Page 48 (Aug. 22, 1933))

(16) Bankers or Trade Acceptances: Bankers or trade acceptances when payable on a date subsequent to acceptance are written obligations for the payment of money from the date of such acceptance and are taxable. However, when payable on demand or presentation and presentation is made after acceptance, they are not written obligations to pay money and are not taxable. (1966 Op. Att’y. Gen. Fla. 066-18, (March 11, 1966))

Cross Reference – subsection 12B-4.054(20), F.A.C.

(17) Annuity Agreements: An annuity agreement issued by a party to an individual in consideration of gifts or donations is taxable as a written obligation to pay money, and the tax is determined by the value of the annuity based upon the life expectancy of the donee. (1960 Op. Att’y. Gen. Fla. 060-131 (Aug. 9, 1960))

(18) Vendor’s Lien: Where a deed of conveyance recites the retention of a vendor’s lien and contains a provision that the vendee agrees to the reservation of such lien and to pay the unpaid balance of the purchase price, tax is due based upon the unpaid balance. (1961 Op. Att’y. Gen. Fla. 061-8 (Jan. 23, 1961))

(19) Assumption of Note and Mortgage: Person assuming a mortgage (Note or written obligation to pay money) effectively renews or modifies the original note or mortgage, and would not be exempt from tax under Section 201.09, F.S., because it includes a person other than the original obligor. Therefore, an assumption of any note and mortgage, whether incorporated in a conveyance which is accepted by the purchaser, or assumed in a separate document, is a taxable renewal under Section 201.08(1), F.S., and not exempt under Section 201.09(1), (2), F.S. When a grantee takes title to real property subject to mortgage, the grantee is not responsible to the holder of the promissory note for the payment of any portion of the amount due, and such mortgage is not subject to tax under Section 201.09, F.S.

Cross Reference – subsections 12B-4.052(6) and (13), paragraph 12B-4.053(33)(g), F.A.C.

(20) Revolving Charge Account Agreements: Purchases made under a revolving charge account agreement where sales slips made in connection with the agreement contain a written obligation to pay money are taxable under Section 201.08(2), F.S., except those activated with the use of a credit card, charge card, or debit card. (1971 Op. Att’y. Gen. Fla. 071-116 (May 24, 1971))

Cross Reference – subsection (11) of Rule 12B-4.054, F.A.C.

(21) Wage Assignments: Assignments of salaries or wages are taxable.

(22) Payment in Full After Execution of Document: A document which constitutes a written obligation to pay money is taxable upon its execution even though payment may be made immediately after execution regardless of the period of time the obligation may be outstanding.

(23) Contracts which Convey an Interest in Realty: A contract which contains a written obligation to pay money and which conveys an interest in realty, such as a timber contract, mineral contract, etc., is taxable as a conveyance of an interest in realty under Section 201.02, F.S., and is also taxable as a written obligation to pay money under Section 201.08, F.S. (1971 Op. Att’y. Gen. Fla. 071-30 (Feb. 19, 1971))

(24) Agreement or Contract for Deed: An agreement or contract for deed that meets the statutory definition of a “mortgage” is subject to tax when filed or recorded in the state based upon the indebtedness secured, regardless of whether the indebtedness is contingent. Agreements or contracts for the sale of land, which are not recorded and contain no written obligation to pay money similar in nature to promissory notes and non-negotiable notes, are not subject to tax as a written obligation to pay money. If the agreement for deed provides that the seller will look only to the land itself for payment of the balance of the purchase price, there is no written obligation to pay money in the contract and it is not subject to tax unless recorded.

(25) “Wrap-Around” Notes: Documentary stamp tax is due upon the face amount of a note (with a maximum tax due of $2450), under which a maker obligates himself to pay a sum certain, even though the payee obligates himself to use such payments to pay off a prior note. (Department of Revenue v. McCoy Motel, Inc., 302 So. 2d 440 (Fla. 1st DCA 1974))

(26) Acceptances: Acceptances are obligations to pay according to the tenor of the document and are taxable under Section 201.08(1)(a), F.S. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 831 (Sept. 24, 1931); 1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 845 (Oct. 15, 1931))

Cross Reference – subsections (7) and (16) of Rule 12B-4.053, F.A.C.

(27) Assignment of Mortgage: An assignment of a mortgage by a lender (mortgagee or owner of the asset) to a new lender who has purchased the note and mortgage and becomes the holder of the note and mortgage is not taxable. (State v. Sweat, 113 Fla. 797, 152 So. 432 (1934)) However, where the assignment of a mortgage is given as collateral security for a new loan, the assignment is taxable (mortgage) when recorded in this state.

Cross Reference – subsection 12B-4.054(5), F.A.C.

(28) Note Executed and Delivered: All notes or written obligations to pay money delivered to the lender, such as master notes and notes drawn in connection with a line of credit, letter of credit, bail bond, or otherwise, executed in Florida or approved and accepted in Florida, are subject to Florida documentary stamp tax. Tax is due based on the face amount of the note, with a maximum tax due of $2450, whether or not funds are advanced at time of delivery. If the note is secured by a recorded mortgage, tax shall be paid on the mortgage at time of recording and a notation made on the note that tax has been paid on the mortgage. The $2450 tax limit placed on a note or other written obligation to pay money, executed in Florida or approved and accepted in Florida, does not apply to a mortgage, security agreement, or other lien filed or recorded in Florida. Renewals are also taxable unless exempted under Section 201.09, F.S.

Cross Reference – subsection (2) of Rule 12B-4.051 and paragraph (12)(e) of Rule 12B-4.052, F.A.C.

(29) Student Loans: All notes executed by students for loans that are guaranteed by the Federal Government or the state are taxable, unless federal regulations prohibit the assessment of such taxes against the borrower.

Cross Reference – subsection 12B-4.054(25), F.A.C.

(30) Foreign Notes and International Banking Transactions:

(a) Notes, drafts and bills of exchange executed for financing the purchase or transfer of real property located in Florida, or secured by a mortgage, deed of trust or other lien upon real property located in Florida, are subject to stamp tax.

Cross Reference – subsection 12B-4.054(27), F.A.C.

(b) Notes executed by foreign entities for financing the purchase of personal property for use in Florida are taxable unless such property is identifiable as being directly and solely in connection with the production, preparation, storage or transportation of tangible personal property for export or import, and the lender is a banking organization defined in Section 199.023(9), F.S.

Cross Reference – subsection 12B-4.054(28), F.A.C.

(31) Out-of-State Notes – Secured by Florida Mortgage: A mortgage recorded in this state encumbering Florida real or personal property, which is security for an out-of-state note is subject to tax as follows:

(a) Indebtedness Secured: The tax is based upon the full amount of the indebtedness secured, whether the indebtedness is contingent or not, unless paragraphs (b) and (c) of this rule apply. See also Sections 201.08(5) and (7), F.S.

(b) Secured by Multi-State Mortgage: When a note is made in another state and is secured by a multi-state mortgage recorded in Florida which describes and pledges the Florida property and the out-of-state property, tax is due on the mortgage when filed or recorded in Florida based upon the percentage of indebtedness which the value of the mortgaged property located in Florida bears to the total value of all the mortgaged property. However, when the mortgage limits recovery to less than the amount of the indebtedness secured, the tax is due on the amount to which recovery is limited. The mortgage is required to state the value of the property in Florida and the other state(s); and also the percentage of the Florida property in relation to the total property. When the documentary stamp tax due is based upon the amount to which recovery is limited on a mortgage, then the mortgage is not required to state the value of the property in Florida and the other state(s); nor is the mortgage required to state the percentage of the Florida property in relation to the total property.

COMPUTATION OF TAX:

Value of Florida property/Total value of all property  Indebtedness = Amount

Example:

Value of Florida property $100,000(1)

Value of out-of-state property $900,000

Total Value of all property $1,000,000(2)

Amount of Indebtedness: $1,000,000(3)

(1) $100,000/(2) $1,000,000  (3) $1,000,000\* = $100,000\*

\*Tax would be calculated on $100,000.

(c) Secured by Florida Mortgage only: When a mortgage describing and pledging only the Florida property is recorded in Florida, which only partially secures an out-of-state loan, and the loan is also secured by a mortgage(s) on out-of-state property, only a pro-rata portion of the indebtedness secured by the Florida mortgage is taxable. The tax will be based upon the percentage of indebtedness which the value of the mortgaged property located in Florida bears to the total value of all mortgaged property, unless the value of the Florida property exceeds this amount. Then the tax will be based upon the value of the Florida property. However, in no event will the tax be due on more than the indebtedness secured by the Florida mortgage or any other amount to which the mortgagee limits its recovery. The mortgage is required to state the value of the property in Florida and the other state(s); and also the percentage of the Florida property in relation to the total property. When the documentary stamp tax due is based upon the amount to which recovery is limited on a mortgage, then the mortgage is not required to state the value of the property in Florida and the other state(s); nor is the mortgage required to state the percentage of the Florida property in relation to the total property.

COMPUTATION OF TAX:

Example 1:

Value of Florida property/Total value of all property  Loan = Amount\*

|  |  |  |
| --- | --- | --- |
|  | Value of Florida property  | $400,000(1) |
|  | Value of out-of-state property  | $100,000 |
|  | Total value of all property  | $500,000(2) |
|  | Amount of loan  | $550,000(3) |

(1) $400,000/(2) $500,000  (3) $550,000 = $440,000\*

\*Tax is calculated upon the pro-rata amount of the loan in the amount $440,000, rather than the value of the Florida property, since the value of the Florida property is less than the pro-rata amount of the indebtedness.

Example 2:

Value of Florida property/Total value of all property  Loan = Amount

|  |  |  |
| --- | --- | --- |
|  | Value of Florida property  | $600,000(1) |
|  | Value of out-of-state property  | $900,000 |
|  | Total value of all property  | $1,500,000(2) |
|  | Amount of loan  | $1,200,000(3) |

(1) $600,000\*/(2) $1,500,000  (3) $1,200,000 = $480,000

\*Tax is calculated on value of Florida property in the amount of $600,000, rather than the pro-rata amount of the loan, since the value of the Florida property is more than the pro-rata amount of the indebtedness.

Example 3:

Value of Florida property/Total value of all property  Loan = Amount

|  |  |  |
| --- | --- | --- |
|  | Value of Florida property  | $800,000(1) |
|  | Value of out-of-state property  | $200,000 |
|  | Total value of all property  | $1,000,000(2) |
|  | Amount of Loan  | $600,000(3) |

(1) $800,000/(2) $1,000,000  (3) $600,000\* = $480,000

\*Tax is calculated on $600,000, since the amount of indebtedness is less than the value of the Florida property but more than the pro-rata amount of the loan.

(32) In-State Notes-Secured by Florida Mortgage: A mortgage recorded in this state encumbering Florida real or personal property, which is security for an in-state note, is subject to tax as follows:

(a) Secured by Multi-State Mortgage: When a note is made in Florida and is secured by a multi-state mortgage recorded in Florida, tax is due on the full amount of the note (with a maximum tax due of $2450) or the percentage of the indebtedness which the value of the mortgaged property located in Florida bears to the total value of all the mortgaged property, whichever is greater. However, where the mortgage limits recovery to less than the amount of the indebtedness secured, the tax is due on the full amount of the note (with a maximum tax due of $2450) or the amount to which the mortgage limits recovery, whichever is greater. The mortgage is required to state the value of the property in Florida and the other state(s); and also the percentage of the Florida property in relation to the total property. When the documentary stamp tax due is based upon the amount to which recovery is limited on a mortgage, then the mortgage is not required to state the value of the property in Florida and the other state(s); nor is the mortgage required to state the percentage of the Florida property in relation to the total property.

(b) Secured by Florida Mortgage only: When a note is made in Florida and is secured by a mortgage on Florida property and is also secured by an out-of-state mortgage, tax is due on the full amount of the note (with a maximum tax due of $2450), the percentage of the indebtedness which the value of the mortgaged property located in Florida bears to the total value of all the mortgaged property, or the value of the property located in Florida, whichever is greater. However, where the mortgage limits recovery to less than the amount of the indebtedness secured, the tax is due on the full amount of the note (with a maximum tax due of $2450) or the amount to which the mortgage limits recovery, whichever is greater. The mortgage is required to state the value of the property in Florida and the other state(s); and also the percentage of the Florida property in relation to the total property. When the documentary stamp tax due is based upon the amount to which recovery is limited on a mortgage, then the mortgage is not required to state the value of the property in Florida and the other state(s); nor is the mortgage required to state the percentage of the Florida property in relation to the total property.

(33) Recorded Evidences of Obligations: Tax is required on a mortgage, trust deed, security agreement, or other evidence of indebtedness filed or recorded in this state. The tax shall be due on the full amount of the primary obligation secured by said mortgage, trust deed, security agreement, or other evidence of indebtedness. The tax is due only on the full amount of the primary obligation, whether the primary obligation is secured by one or more mortgages from the same obligor, or by an additional or supplemental mortgage from another party. All such mortgages are deemed to secure the primary obligation. For example, a mortgage given as additional collateral, to secure a cross-collateralization agreement or guaranty agreement, or given as substitution of collateral, will not require additional tax if proper tax is paid on the full amount of the primary obligation. However, where proper tax is not paid on the full amount of the primary obligation, the tax shall be paid on any additional or supplemental mortgage. A document recorded which renews or extends an existing obligation is subject to tax, unless it meets the requirements of Section 201.09, F.S. Some examples of documents on which tax may be required, within the limitations stated in this rule, when recorded in this state are:

(a) Mortgage;

(b) Trust Deed;

(c) Indenture;

(d) Supplemental Mortgage or Indenture;

(e) Amendment to Mortgage or Indenture;

(f) Mortgage Modification or Extension Agreement;

(g) Assumption Agreement;

(h) Mortgage Securing Guaranty;

(i) Mortgage Securing Indemnification Agreement;

(j) Mortgage Securing Bail Bond;

(k) Mortgage Securing Letter of Credit; and

(l) Mortgage Securing Line of Credit.

(34) Promissory Notes, Nonnegotiable Notes, and Written Obligations to Pay Money Made, Executed, and Delivered in Another State, and not Secured by a Florida Mortgage: Promissory notes, nonnegotiable notes, and written obligations to pay money (hereinafter, called notes) made, executed, and delivered to a Florida lender in another state are not subject to Florida’s documentary stamp tax. If the notes then are brought into Florida for collection after they have been made, executed, and delivered to the Florida lender, or its agent, in another state, no tax is due. However, if a note is made and executed in another state and delivered to the lender in Florida, the note would be subject to tax. The Department will presume that if a note is made payable to a Florida lender and the note is held by the Florida lender in Florida, then tax will be due unless the lender can establish that the note was made, executed, and delivered to the lender outside the state. Proof sufficient to establish that a note is not subject to tax includes:

(a) A sworn affidavit made before an out-of-state notary public at the time of the signing of the note by the borrower(s) and delivery of the note to the lender attesting that the signing and delivery of the note occurred in the presence of the out-of-state-notary, or

(b) The note itself could bear a notarization and acknowledgment as to where the note was executed, together with an affidavit made before an out-of-state-notary by the lender attesting that the note was delivered to the lender, or its agent out-of-state. Execution and delivery need not occur in the same jurisdiction, provided that both execution and delivery occurred outside of Florida, or

(c) Any other proof that the borrower made, executed, and delivered the note in another state to a Florida lender. Travel vouchers, airplane stubs, and hotel receipts corresponding with the signing and delivery of the note would be acceptable proof.

*Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.08 FS. History–Revised 8-18-73, Formerly 12A-4.53, Amended 2-21-77, 11-29-79, 4-11-80, 7-27-80, 12-23-80, 3-30-81, 12-30-82, 8-29-84, Formerly 12B-4.53, Amended 12-29-86, 12-5-89, 2-13-91, 10-18-94, 12-30-97, 7-28-98, 1-4-01, 5-4-03.*

**12B-4.054 Exempt Transactions.**

(1) Registered Security Dealers: Promissory notes for a duration of thirty days or less, made by a security dealer registered under the provisions of Chapter 517, F.S., shall be exempt from tax, provided these promissory notes are secured by a collateral security as defined in Section 517.021, F.S., and upon which the tax under Chapter 201, F.S., has been paid.

(2) Certificate of Deposit: Certificates of deposit issued by a bank, banking association, or trust company are exempt.

(3) Wholesale Warehouse Mortgage Agreements: All promissory notes, non-negotiable notes and other written obligations to pay money given pursuant to a wholesale warehouse mortgage agreement as provided under Section 201.21, F.S., shall be exempt from the tax only when the amount of tax due on or in respect to the collateral obligation(s) given as security has been paid. The exemption does not apply to the amount of the indebtedness evidenced by a note or other written obligation to pay money that is in excess of the amount of the indebtedness evidenced by such collateral obligation(s) given as security. The maximum of tax due on any excess of the indebtedness is $2,450.

(4) Contingent Obligations: A written promise to pay money which is not fixed and absolute at the time of execution is not subject to tax.

(5) Assignment of Mortgage: An assignment of a mortgage by a lender (mortgagee or owner of the asset) to a new lender who has purchased the note and mortgage and becomes the holder of the note and mortgage is not taxable (State v. Sweat, 152 So. 432 (1934)). However, where the assignment of a mortgage is given as collateral security for a new loan, the assignment is a taxable mortgage when recorded in this state.

Cross Reference – subsection 12B-4.053(27), F.A.C.

(6) Assignment of Conditional Sale Contract: An assignment of a conditional sale contract does not come within the terms of the Documentary Stamp Tax Act. Therefore, such assignments are not taxable. However, the assignment of contract as collateral security for a new loan, when recorded in the state, is taxable. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 853 (Oct. 23, 1931); 1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 854 (Oct. 23, 1931))

(7) Unsigned Documents: A note or written obligation to pay money which is not signed by maker or obligor is not taxable. (Lee v. Quincy State Bank, 127 Fla. 765, 173 So. 909 (1937))

(8) Leases: A lease of tangible personal property which does not contain an unconditional obligation to pay money is not subject to tax, unless the lease provides that the lessee will become the unconditional owner of the property when the total of the rental payments equals the value of the property being leased.

(9) Agreement for Deed: No Personal Liability: Contracts for sale of land, which contain no “written obligation to pay money” of the same nature of promissory notes and non-negotiable notes, are not to be deemed written obligations to pay money within the purview of Section 201.08(1)(a), F.S. (State v. Green, 132 So. 2d 761 (Fla. 1961)). Attorney General Opinion 059-244 is construed as extending to contracts for the sale of land which contain express obligations to pay money, of the same genus as promissory notes and non-negotiable notes. With this limitation, Opinion 059-244 is adhered to and confirmed (1961 Op. Att’y. Gen. Fla. 061-176 (Oct. 27, 1961)). If the following provision is incorporated in agreement for deed: “. . . as against the buyer or any subsequent purchaser from the buyer or any beneficiary for whom they may be acting, it being the understanding of the parties that the seller will look only to the land itself for payment of the balance of the purchase price,” there is no obligation to pay money in the contract and no documentary stamps are due. However, if such agreement for deed is filed or recorded in Florida, it would be subject to the documentary stamp tax under Section 201.08(1)(b), F.S.

(10) Rights to Rescind: Lot purchase contracts in existence beyond a stated period of time without having been rescinded by purchaser as provided for in the terms of the contract, constitute “written obligations to pay money” subject to documentary stamp tax, but contracts rescinded by purchasers within the stated time period are not subject to tax. (Gulf American Land Corporation v. Green, 157 So. 2d 70 (Fla. 1963))

Cross Reference – subsection 12B-4.053(5), F.A.C.

(11) Revolving Charge Account – No “Promise to Pay” Contained in Sales Slip: Retailer’s Flexible charge account application agreement which is dependent upon the happening of a contingency before any obligation is created, that is, the purchase of goods and the signing of a sales slip which is a mere acknowledgment of delivery of goods and does not in itself contain any promise to pay is not subject to tax. (Maas Brothers, Inc. v. Dickinson, 195 So. 2d 193 (Fla. 1967))

Cross Reference – subsection 12B-4.053(20), F.A.C.

(12) Cashier’s Check: A cashier’s check is a check, draft, or other order for the payment of money drawn by the cashier of a bank upon either his own or some other bank, in which funds of his bank are deposited, and is not a written obligation for the payment of money as contemplated by the provisions and requirements of the Documentary Stamp Tax Act. Therefore, no tax is required on cashier’s checks. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 831 (Sept. 24, 1931); 1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 845 (Oct. 15, 1931))

(13) Documents Delivered in Another State – “Promise to Pay”: Where a company sells merchandise under agreement or contract outside the State of Florida, and the merchandise is delivered outside the State. Subsequently the purchaser moves to Florida, and the unpaid balance due on such contract or agreement is forwarded to one of the company’s stores in Florida. Such contracts are not Florida transactions even after the agreement is forwarded to one of the Florida stores for collection. Therefore, the documentary stamp is not required upon the balance due at the time the contracts are brought into Florida. (1944 Op. Att’y. Gen. Fla. 044-174 (June 12, 1944))

(14) Conditional Sales Contracts – Executed Outside Florida and Assigned to Florida Finance Company: Conditional sales agreements, evidencing the sale of motor vehicles, from a customer to a motor vehicle dealer in Georgia, discounted and assigned to a finance company doing business in Florida, are not subject to documentary stamp taxes under Florida Statutes, when such agreements are entirely entered into and executed in Georgia, and the finance company enters into the matter after the conditional sales contract is binding. (1962 Op. Att’y. Gen. Fla. 062-11 (Jan. 18, 1962))

(15) C. O. D. Order – Order and Purchase Contract From Out of State Vendor: Where a person doing business in the state sends an ordinary purchase order for the purchase of merchandise to a non-resident doing business in another state, which order is accepted in another state and the merchandise shipped interstate, such ordinary purchase order, when it contains no express promise to pay for the merchandise ordered and the same is shipped on open account or cash on delivery is not taxable. (1946 Op. Att’y. Gen. Fla. 046-357 (Aug. 10, 1946))

(16) Document Executed Outside the State to Florida Payee – Payable Outside This State: A promissory note made in another state, by a foreign corporation to a payee of this state, payable at a bank in another state is not taxable. (1960 Op. Att’y. Gen. Fla. 060-82 (April 21, 1960))

(17) Contract Brought into State for Collection: Contracts for the purchase and sale of real property located in this state, made, executed and delivered in other states, and sent into this state for purposes of collection only are not subject to tax. (1960 Op. Att’y. Gen. Fla. 060-209 (Dec. 30, 1960))

(18) Surety Bonds: Surety bonds which are to insure the doing of certain things required by the conditions of such bonds and which contain a promise to pay a sum only in the event of the happening of the named contingency are not taxable. (1944 Op. Att’y. Gen. Fla. 044-356 (Dec. 6, 1944))

(19) Travel Checks: A travel check is issued by the bank and thereupon becomes an order for the payment of money by the bank when properly countersigned, much in the character of a cashier’s check and is therefore not taxable. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 893 (Dec. 22, 1931))

(20) Banker’s or Trade Acceptances: Banker’s or trade acceptances, when payable on a date subsequent to acceptance, are written obligations for the payment of money from the date of such acceptance and are taxable. The maximum tax due on a banker’s or trade acceptance is $2,450. However, when payable on demand or presentation, and presentation is made after acceptance, they are not written obligations to pay money and are not taxable. (1961 Op. Att’y. Gen. Fla. 066-18 (Mar. 11, 1966))

Cross Reference – subsection (16) of Rule 12B-4.053, F.A.C.

(21) Pawn Tickets: Transactions between pawnbrokers and their customers concerning pawns made between them are not “written obligations to pay money” within the purview of Section 201.08, F.S., unless the pawn ticket or a copy thereof contains a written promise to pay money, or is otherwise specifically within some section of Chapter 201, F.S. Whether a pawn ticket is a written promise to pay money must be determined from the face of that document. (1961 Op. Att’y. Gen. Fla. 061-12 (Jan. 25, 1961))

(22) Military Bases – Written Obligation to Pay Money: Written obligations to pay money executed on military bases are not taxable. However, any recorded documents evidencing such indebtedness will require tax. (1963 Op. Att’y. Gen. Fla. 063-136 (Nov. 13, 1963))

(23) Credit Unions – Written Obligations to Pay Money: Written obligations to pay money executed by state or federal chartered credit unions are exempt. (1957 Op. Att’y. Gen. Fla. 057-21 (Jan. 21, 1957))

Cross Reference – subsection 12B-4.053(10), F.A.C.

(24) Obligations Executed by Governmental Entities: No tax is required on obligations executed by the United States or its agencies, or by the state, counties, municipalities or any political subdivisions or agency of the state.

Cross Reference – subsection 12B-4.002(2) and paragraph 12B-4.002(3)(b), F.A.C.

(25) Student Loans: Documentary stamp tax is not required on promissory notes executed by students who are receiving financial aid from federal or state assistance programs, or any financial aid program administered by a state university or community college, or loans guaranteed by the Federal Government or the state when federal regulations prohibit the assessment of such taxes against the borrower.

Cross Reference – subsection 12B-4.053(29), F.A.C.

(26) Industrial Development Authorities and Florida Housing Finance Corporation: Lease purchase agreements, agreements for sale, agreements or contracts for deeds, notes and mortgages securing a promise to pay money to an industrial development authority or the Florida Housing Finance Corporation by a private entity in connection with the issuance of bonds under Chapter 159 and 420, F.S., are exempt from tax under Chapter 201.08, F.S.

Cross Reference – subsection 12B-4.013(17), F.A.C.

(27) Foreign Notes:

(a) Notes and other written obligations to pay money are exempt from stamp tax if the makers or obligors are individuals residing outside the United States or business organizations or other persons located outside the United States, at the time of making or execution of the note or written obligation. This exemption does not apply to the following:

1. Mortgages, trust deeds, security agreements, or other evidences of indebtedness relating to the purchase or transfer of real property located in Florida and filed or recorded in this state.

2. If the purpose of the financing is to finance all or part of the purchase of personal property for use in Florida, unless such personal property is identifiable as being directly and solely in connection with the production, preparation, storage or transportation of tangible personal property for export or import, and the lender is a banking organization defined in Section 199.023(9), F.S.

3. If at the date of the instrument, the individual obligor resides within the United States; or, if a majority of the equity securities of the maker of the document are owned by individuals residing within the United States or business organizations located within the United States.

(b) The lender shall be entitled to rely upon the written certificate of each maker or obligor certifying as to the purpose of the financing and residency of the maker or obligor; or, if a corporate borrower, that a majority of its equity securities are not owned by individuals residing within the United States or business organizations or other persons located within the United States.

Cross Reference – subsection 12B-4.053(30), F.A.C.

(28) International Banking Transactions:

(a) Documentary stamp tax is not required on notes and evidences of indebtedness, including but not limited to financing statements, drafts and bills of exchange, that are made, issued, drawn upon, accepted, delivered, shipped, received, signed, executed, assigned, transferred or sold by or to a banking organization as defined in Section 199.023(9), F.S., in the conduct of an international banking transaction, as defined in Section 199.023(11), F.S. The exemption does not apply if the financing is for the purchase or transfer of real property located in Florida, or secured by a mortgage, deed of trust or other lien upon real property located in Florida.

(b) For the purposes of the exemption in Section 201.23(4), F.S., the following words and phrases shall have the meaning ascribed to them below:

1. “Banking organization” – means any one of the following:

a. A bank organized and existing under Florida law;

b. A national bank organized and existing as a national banking association under the National Banking Act, Title 12, U.S.C., Section 21, which also maintains its principal office in Florida;

c. An Edge Act corporation organized under the Federal Reserve Act, Title 12, U.S.C., Section 25(a), which maintains a Florida office;

d. An international banking agency licensed under Florida law;

e. A federal agency, licensed under Sections 4 and 5 of the International Banking Act of 1978 to maintain an office in Florida.

2. “International banking transaction” – means financing of any of the following:

a. Tangible personal property or services for export or import into the United States or between jurisdictions abroad;

b. Production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from or import into the United States or jurisdictions abroad;

c. Contracts, projects, or activities to be performed substantially abroad, except transactions secured by mortgage, deed or trust, or other lien on Florida real property.

3. “Abroad” – means in a foreign nation; in a colony, dependency, possession or territory of a foreign nation or of the United States; or in the Commonwealth of Puerto Rico.

4. “Performed substantially abroad” – means completion of the principal terms, conditions, or requirements of a contract, project, or activity abroad, notwithstanding performance of a nominal portion of the contract, project, or activity in Florida or the United States. The relative values of the operations, activities, or services performed, and the percentage of work completed, in various jurisdictions shall be considered in determining whether a contract, project, or activity is performed substantially abroad.

(c) Any financing that is only partially identifiable as being in connection with the production, preparation, storage or transportation of tangible personal property or services for export from or import into the United States shall not qualify for the exemption.

(d) The lender shall prepare a statement to be placed with each loan that documentation qualifying the transaction for the exemption provided by this chapter was submitted to the lender and is in the file.

Cross Reference – subsection 12B-4.053(31), F.A.C.

(29) Financing Statements. – Chapter 679, Uniform Commercial Code: 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.

Cross Reference – subsection 12B-4.053(32), F.A.C.

(30) Confirmed Bankruptcy Plan: A promissory note or other written obligation to pay money, bond, mortgage, trust deed, security agreement or other evidence of indebtedness filed or recorded in Florida issued pursuant to a Chapter 11 plan which was confirmed under Section 1129 of the Bankruptcy Code (Title 11 U.S.C.), prior to the date of the issuance is not taxable. (11 U.S.C. Section 1146(a); Florida Department of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33 (2008))

*Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.08, 201.09, 201.10, 201.11, 201.21, 201.22, 201.23, 201.24, 517.32 FS. History–New 8-18-73, Formerly 12A-4.54, Amended 2-21-77, 11-29-79, 3-5-80, 4-11-80, 7-27-80, 12-23-80, 2-12-81, Formerly 12B-4.54, Amended 3-30-81, 12-3-81, 12-29-86, 12-5-89, 2-13-91, 10-18-94, 12-30-97, 7-28-98, 1-4-01, 5-4-03, 7-30-13.*

**12B-4.060 Tax on Transfers of Ownership Interest in Legal Entities.**

(1)(a) Scope. This rule applies to transfers of an ownership interest in a conduit entity to which real property was transferred without tax paid on the full consideration for the property.

(b) Definitions. For purposes of this rule:

1. “Conduit entity” means a legal entity, or its successor entity, to which real property is transferred without full consideration by a grantor who owns a direct or indirect interest in the entity.

2. “Full consideration” means the consideration that would be paid in an arm’s length transaction between unrelated parties, which would be the consideration as provided in Section 201.02(1)(a), F.S., but an amount not less than the fair market value of the real property.

(2) When there is a transfer of an ownership interest in a conduit entity for consideration within 3 years after a transfer of real property to the conduit entity, the transfer of such ownership interest is subject to tax if the conduit entity continues to own property that would cause the entity to be considered a conduit entity.

(3) The tax is based on the consideration paid or given for the ownership interest in the conduit entity, which includes the amount of any mortgage attached to real property that was transferred to the conduit entity. If the conduit entity owns assets other than the real property referred to in subsection (2), tax is calculated by multiplying the consideration for the interest in the conduit entity by the tax rate and then multiplying the result by a fraction, the numerator of which is the value of the real property referred to in subsection (2) and the denominator of which is the value of all assets owned by the conduit entity.

(4) A gift of an ownership interest in a conduit entity is not subject to tax to the extent there is no consideration.

(5) The transfer of shares or similar equity interests that are dealt in or traded on public, regulated security exchanges is not subject to the tax.

(6)(a) If an instrument is filed or recorded in Florida by the 20th day of the month following the month the ownership interest is transferred, the tax must be remitted at the time of the filing or recording. If an instrument is not filed or recorded by the 20th day of the month following the month the ownership interest is transferred, the tax is due to the Department on or before the 20th day of the month following the ownership transfer. The tax must be reported on a Documentary Stamp Tax Return for Nonregistered Taxpayers’ Unrecorded Documents (Form DR-228, incorporated by reference in Rule 12B-4.003, F.A.C.).

(b) When the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied with returns will be accepted as timely if postmarked on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this rule, a “legal holiday” means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and section 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an Internal Revenue district.

(7) The provisions of this rule do not affect the imposition of tax on transactions described in Section 201.02(4), F.S., on documents which convey or transfer, pursuant to Section 689.071, F.S., any beneficial interest in lands, tenements, or other real property.

(8) The discretionary surtax imposed under Section 201.031, F.S., applies to taxable transfers under Section 201.02(1)(b), F.S., and this rule.

(9) Examples.

(a) Example 1: On July 2, 2009, Lloyd transferred Orange County, Florida real property (the real property), owned by him alone, to a limited liability company (LLC) he owned alone. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 3, 2009, Lloyd transferred his interest in the LLC for $1,000,000. The LLC owned no assets other than the real property. Documentary stamp tax of $7,000 was due on the transfer of Lloyd’s ownership interest in the LLC based on the $1,000,000 consideration, since tax was not paid on the full consideration when the real property was transferred to the LLC.

(b) Example 2: On July 2, 2009, Calvin and Sally transferred Duval County, Florida real property (the real property), which they owned equally, to a limited liability company (LLC) owned equally by Calvin and Sally. The full consideration at the time of the transfer was $30,000. Documentary stamp tax of $210 was paid on the document that transferred the real property to the LLC. On July 10, 2009, Calvin and Sally sold their ownership interests in the LLC. No documentary stamp tax was due on the transfer of Calvin’s and Sally’s ownership interests in the LLC, since no “conduit entity” was created pursuant to Section 201.02(1)(b)1.a., F.S., and this rule, since tax was paid on the full consideration for the real property when it was transferred to the LLC.

(c) Example 3: On July 2, 2009, Vern and Carol transferred Miami-Dade County, Florida commercial real property (the real property), which they owned equally, to a limited liability company (LLC) owned equally by Vern and Carol. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 10, 2009, Vern sold his interest in the LLC for $200,000. The LLC owned no assets other than the real property. Tax of $1400 and discretionary surtax of $900 were due on the transfer of Vern’s ownership interest in the LLC, since tax was not paid on the full consideration for the real property when it was transferred to the LLC.

(d) Example 4: On July 2, 2009, Pam and Mike transferred Walton County, Florida real property (the real property), which they owned equally, to a corporation. The corporation was owned equally by Mike and a limited liability company (LLC) owned by Pam alone. No documentary stamp tax was paid on the document that transferred the real property to the corporation. On July 10, 2009, Pam sold her interest in the LLC (thereby selling her indirect ownership interest in the corporation) for $45,000. The corporation owned assets in addition to the real property transferred to it on July 2, 2009. The value of the real property was $85,000, and the real property made up 95% of the value of all assets owned by the corporation. The only asset owned by the LLC was its interest in the corporation. Tax of $299.25 (450 x $.70 x 95%) was due on the transfer of Pam’s ownership interest, since tax was not paid on the full consideration for the real property when it was transferred to the corporation.

(e) Example 5: On July 2, 2009, Tom transferred Broward County, Florida real property (the real property), owned by him alone, to a limited liability company (LLC) he owned alone. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 10, 2009, Tom sold 50% of his interest in the LLC to Imogene for $200,000. The LLC owned no assets other than the real property. Tax of $1,400 was due on the transfer of Tom’s 50% ownership interest in the LLC based on consideration of $200,000, since documentary stamp tax was not paid on the full consideration for the real property when it was transferred to the LLC. On July 25, 2009, Tom sold one-half of his remaining 50% ownership interest in the LLC for $105,000, and Imogene sold one-half of her 50% ownership interest in the LLC for $105,000. Tax of $735 was due on the transfer of Tom’s ownership interest, since tax was not paid on the full consideration for the real property when it was transferred to the LLC. No tax was due on Imogene’s transfer, since tax was due and paid on Tom’s transfer to Imogene.

(f) Example 6: On July 2, 2009, Sue transferred Polk County, Florida real property (the real property), owned by her alone, to a limited liability company (LLC) she owned alone. The real property was encumbered by a mortgage at the time of the transfer. The mortgage balance at the time of the transfer was $75,000, which was an amount less than the property’s fair market value. Documentary stamp tax of $525 was due and paid on the document that transferred the real property to the LLC based on the mortgage balance of $75,000. The LLC owned no assets other than the real property. On July 31, 2009, Sue sold her interest in the LLC for $110,000. Tax of $770 was due on the transfer of Sue’s ownership interest in the LLC based on consideration of $110,000.

*Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.02(1), (4), 201.0201, 201.031 FS History–New 4-25-12.*

1. During the 2018 session, the following exemption was added to Fla. Stat. 201.02(7) which has not yet been incorporated in the Florida Administrative Code:

“(b) A deed or other instrument that transfers or conveys homestead property or any interest in homestead property between spouses, if the only consideration for the transfer or conveyance is the amount of a mortgage or other lien encumbering the homestead property at the time of the transfer or conveyance and if the deed or other instrument is recorded within 1 year after the date of the marriage. This paragraph applies to transfers or conveyances from one spouse to another, from one spouse to both spouses, or from both spouses to one spouse. For the purpose of this paragraph, the term “homestead property” has the same meaning as the term “homestead” as defined in s. 192.001.” [↑](#footnote-ref-1)
2. During the 2018 session, the following exemption was added to Fla. Stat. 201.25 which have not yet been incorporated in the Florida Administrative Code:

“201.25 Tax exemptions for certain loans.—There shall be exempt from all taxes imposed by this chapter:

(1) Any loan made by the Florida Small Business Emergency Bridge Loan Program in response to a disaster that results in a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(2) Any loan made by the Agricultural Economic Development 1303 Program pursuant to s. 570.82. [↑](#footnote-ref-2)