

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12B-4, FLORIDA ADMINISTRATIVE CODE

DOCUMENTARY STAMP TAX

AMENDING RULES 12B-4.001, 12B-4.002, 12B-4.003, 12B-4.004, 12B-4.005,

12B-4.007, 12B-4.011, 12B-4.012, 12B-4.013, 12B-4.014,

12B-4.041, 12B-4.042, 12B-4.043, 12B-4.051, 12B-4.052, 12B-4.053, AND 12B-4.054

REPEALING 12B-4.006

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)~~, must 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 must shall meet the requirements of paragraph (b). All taxes collected on behalf of the state and associated information must shall be electronically submitted to the Department, as provided in Section 213.13, F.S., and ~~Rule~~ Chapter 12-28, F.A.C. There will 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 not recorded ~~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 unrecorded 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. If a registered person previously submitted the Florida Business Tax Application Form DR-1 (form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.) to the Department and holds an active certificate of registration or reemployment tax account, the registered person may use an Application for Registered Businesses to Add a New Florida Location (Form DR-1A, incorporated by reference in Rule 12A-1.097, F.A.C.) in the following circumstances:

1. and 2. No change.

(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 website at www.floridarevenue.com using the Department's eservices.
~~eServices.~~

2. Filing ~~Form DR-1, Florida Business Tax Application (incorporated by reference in Rule 12A-1.097, F.A.C.)~~ with the Department, as indicated on the registration application.

(d) through (e) No change.

(f) Any person registered must ~~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 must ~~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 must ~~shall~~ be indicated for each document. When the document is not taxable, the journal must indicate the reason for the exemption.

(g) No change.

(3) through (4) No change.

~~(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.~~

Rulemaking Authority 201.11(1), 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—New 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, 3-25-20,_____.

12B-4.002 Liability for Tax.

(1)(a) Liability in general – Except as otherwise provided in paragraph (1)(b) and subsections (2) and (3) of this rule, the tax is payable by any of the parties to a taxable document transaction. When the ~~The~~ parties to the document transaction may agree among themselves as to who will shall pay the tax, the agreement does but such ~~agreements do~~ not relieve the remaining parties others from their liability for the payment of the tax in the event the agreement is not followed. The tax remains due by the remaining parties.

~~(b) Taxability of Instrument – The taxability of an instrument, as well as amount of the tax, is determined by form and face of the instrument and cannot be affected by proof of extrinsic facts. (Lee v. Kenan, 78 F.2d 425 (5th Cir. 1935); 100 ALR 869)~~

~~(b)(e)~~ No change.

(2) United States, Its Agencies or Instrumentalities

(a) A document Transactions between nonexempt non-exempt parties and the United States, or its agencies is or ~~instrumentalities are~~ taxable unless such document has ~~transactions are evidenced by documents which have~~ been exempted by federal or state law Congress.

(b) Written obligations to pay money executed by the United States or its agencies as borrowers are exempt.

~~(c)(b)~~ Mortgages and notes executed by nonexempt non-exempt parties to instrumentalities of the federal government, ~~which include, but are not limited to the following agencies~~ are subject to the tax.:

~~Administrator of Veterans Affairs;~~

~~Central Bank for Cooperatives;~~

~~Columbia Bank for Cooperatives;~~

~~Farmers Home Corporation;~~

~~Federal Housing Commissioner;~~

~~Federal Intermediate Credit Bank;~~

~~Federal Production Credit Association;~~

~~Federal Savings and Loan Associations;~~

~~Production Credit Corporation;~~

~~Production Credit Corporation of Columbia;~~

~~Rural Electrification Administration;~~

~~Small Business Administration.~~

~~(d)(e)~~ Mortgages and notes between nonexempt ~~non-exempt~~ parties and agencies or instrumentalities of the federal government, ~~including, but not limited to, the following agencies are exempt by Congress and, therefore, are~~ not taxable.~~;~~ (However, an instrument which is guaranteed or insured by such an agency ~~one of the following agencies or instrumentality~~ is subject to tax.)

~~1. Agricultural Credit Association;~~

~~2. Farmers Home Administration; also includes deeds to the Farmers Home Administration (Name changed to: Rural Development/Rural Housing Services);~~

~~3. Federal National Mortgage Association (FNMA);~~

~~4. Government National Mortgage Association (GNMA);~~

~~5. Neighborhood Reinvestment Corporation;~~

~~6. Reconstruction Finance Corporation.~~

(3) State, Counties, and Municipalities.

(a) The state, county, municipality, or any political subdivision ~~thereof~~ is not liable for documentary stamp ~~the~~ tax ~~with respect to a document transferring any interest in realty to which it is a party.~~ However, the document transaction is not exempt from tax, and any nonexempt ~~the non-exempt~~ party to the document transaction is liable for the tax. ~~The affixing of stamp tax to an instrument by the state, county, municipality, or a political subdivision thereof does not constitute payment of the tax, and the non-exempt party remains liable for the tax in such case.~~

~~Cross Reference—subsection 12B 4.014(13), F.A.C.~~

(b) Written obligations to pay money issued by the state, counties, municipalities, or any political subdivision of the state are exempt.

~~Cross Reference—subsection 12B 4.054(24), F.A.C.~~

(4) Documents ~~Instruments~~ Between Governmental Agencies:

(a) Documents that transfer real property ~~Instruments~~ between federal or state agencies ~~governments~~ or counties, municipalities, or any political subdivisions are not taxable ~~their instrumentalities, all being governmental agencies, are exempt from tax.~~

~~Cross Reference—subsection 12B 4.014(10), F.A.C.~~

(b) A conveyance by a master in chancery, sheriff, or clerk of circuit court for realty sold under foreclosure, execution, or court judgment to an agent of the federal government who is the mortgagee is not taxable unless there are excess funds received from the sale from which the tax may be paid.

~~Cross Reference—subsection 12B-4.013(3), F.A.C.~~

Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.01, 201.02, 201.08, 201.24 FS. History—New 8-18-73, Formerly 12A-4.02, Amended 3-13-79, 11-29-79, 12-3-81, Formerly 12B-4.02, Amended 12-5-89, 2-13-91, 12-30-97,_____.

12B-4.003 Public Use Forms.

(1)(a) No change.

(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 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 711, 1(800)955-8770 (Voice) and 1(800)955-8771 (TTY).

(2) through (4) No change.

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, 213.755 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, 1-1-23,_____.

12B-4.004 Refunds.

~~(1)~~ Any person who has overpaid documentary stamp tax or discretionary surtax, or paid the tax or surtax that was not due, or paid the tax or surtax in error, 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 be filed with the Department within three years after the date the tax was remitted to the Department and 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)~~

~~Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 95.091, 213.255, 215.26 FS. History—New 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 or Discretionary Surtax Required. For any document, instrument, or paper upon which the documentary stamp tax or discretionary surtax is imposed and the proper amount of tax or surtax remains unpaid, the person or persons liable for the tax upon the document, instrument, or paper is subject to a specific penalty of 10 percent of the amount of the tax or surtax unpaid for each 30 days, or fraction thereof, the tax or surtax remains unpaid, not to exceed 50 percent of the unpaid tax or surtax.

~~(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) 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) Failure to Timely File a Return. When the documentary stamp tax or discretionary surtax imposed on any document, instrument, or paper is not timely reported and paid, as required by Section 201.133, F.S., and Rule 12B-4.001, F.A.C., a minimum penalty of \$10 for failure to timely file the tax return required and a penalty for failure to timely pay the tax or surtax due, as provided in subsection (1), are imposed.

(3)(2)(a) Payment of interest is due shall be at the following rate of interest established pursuant to Section 213.235, F.S., and Rule 12-3.0015, F.A.C., prorated daily.:

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 or discretionary surtax is due until the date on which the tax or surtax is paid.

Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.031, 201.11, 201.12, 201.133, 201.17, 201.20, 213.21, 213.235 FS. History—New 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,_____.

The following rule is being repealed.

12B-4.006 Excise Tax on Documents; Construction.

Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 201 FS. History—New 8-18-73, Formerly 12A-4.06, 12B-4.06, Amended 12-5-89, 12-30-97, Repealed_____.

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))

Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 201 FS. History—New 8-18-73, Formerly 12A-4.06, 12B-4.06, Amended 12-5-89, 12-30-97, Repealed.

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. The; his failure of the Clerk to require payment of the proper amount of tax stamp taxes prior to recording will in no way protect the owner or holder of the document does not relieve the parties to the document from being liable for any tax due 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—New 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) No change.

(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))~~
Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.01, 201.02 FS. History—New 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)~~(a) Documentary Stamps;~~ Rate; Computation: ~~The Effective August 1, 1992, the tax imposed~~ 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 ~~is shall be~~ at the rate of 70 cents on each \$100 or fractional part thereof of the consideration therefor. The 70 cent rate does not apply to deeds, instruments, or writings relating to real property located in ~~applies except for~~ any county that has implemented the provisions of Section 201.031, F.S.

(b) The documentary stamp tax in Miami-Dade County, which has implemented the provisions of Section 201.031, F.S., is levied at the rate of 60 cents per \$100 (or portion thereof) on documents that transfer interest in Florida real property. 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 ~~is 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 ~~is 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: The documentary stamp surtax in Miami-Dade County, which has implemented the provisions of Certain charter counties, as defined in Section 125.011, F.S., are authorized to levy a surtax pursuant to Section 201.031, F.S., is levied at on the same documents taxed under Section 201.02, F.S. The rate of tax shall not exceed 45 cents for each \$100 (or portion fractional part thereof) of the consideration paid or to be paid. However, a document conveying only a single-family residence, which includes ~~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 surtax ~~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.~~

~~(4)(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 taxable consideration liable for the documentary stamp tax under Section 201.02, F.S., and the amounts set forth as interest are not taxable consideration 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.~~

~~(5)(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))~~

Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.01, 201.02, 201.031 FS. History—New 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) No change.

(3)(a) Clerk of the Court, Master, Sheriff. A conveyance by a master in chancery, a sheriff, or a Clerk ~~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 assignment of a successful bid at a foreclosure sale is taxable as an instrument transferring real property. ~~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 ~~Cross Reference~~ – subsection 12B-4.014(12)(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 nonexempt ~~non-exempt~~ party is subject to tax. The state, county, municipality or other public agency is exempt from payment of tax but the nonexempt ~~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 a nonexempt ~~non-exempt~~ party, except as provided in subsection 12B-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) No change.

(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: A document that conveys an easement is ~~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.~~

~~(12)~~(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 ~~has~~ have been paid on the contract. The deed must ~~shall~~ indicate, by a 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)).~~

~~(13)~~(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.~~

~~(14)~~(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 must ~~shall~~ indicate by a 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)).~~

~~(15)~~(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.~~

~~(16)~~(18) No change.

~~(17)~~(19) Combined Sale of Land and Improvements: Where a 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.~~

~~(18)(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 includes ~~shall include~~ the amount of any “wrap-around” mortgage. ~~(Department of Revenue v. Brookwood Associates, Limited, 324 So. 2d 184 (Fla. 1st DCA 1975))~~

~~(19)(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.~~

~~(20)(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) A document that transfers a mobile home classified as real property at the time of transfer is subject to tax. A mobile home is classified as real property when, prior to the transfer, the mobile home is permanently affixed to land owned by the seller of the mobile home and: 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.~~

~~1. The mobile home and land are listed on the ad valorem property tax roll for the county in which the mobile home and land are located; or~~

~~2. The seller of the mobile home and of the land to which the mobile home is permanently affixed has filed a declaration with the county property appraiser requesting that the mobile home be assessed as real property.~~

~~(b) A mobile home is permanently affixed to land when it is tied down and connected to utilities.~~

~~(c)(b) When a mobile home is not classified as real property at the time of the transfer 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. 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.~~

~~(d)(e)~~ Where ~~a member~~ members of a mobile home park ~~has~~ have practical dominion over ~~a~~ a designated site, ~~sites on which a mobile home is located which is essentially equivalent to ownership, the~~ each member's interest in the site ~~on which his home is affixed~~ constitutes an interest in real property "ownership" rendering mobile homes taxable as real property. Any instrument that transfers a member's ~~Therefore, any instruments transferring interest is, 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).

~~(21)(23)~~ No change.

~~(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.~~

~~(22)(25)~~ Assignment of Beneficial Interest in Trust created under Chapter 689, F.S.: Any ~~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~~(6)(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.

~~(23)(26)~~ No change.

~~(24)(27)~~ No change.

~~(25)(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 if 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 is~~ is ~~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 If there is no consideration other than the mortgage, then stamp tax is~~ is ~~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 of beneficial ownership interest as a trust beneficiary immediately before the transfer. The tax is, 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 If there is no consideration other than the mortgage, then stamp tax is~~ is ~~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 determines and shall determine provided that each beneficiary receives ~~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. Tax ~~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~~ or not ~~a~~ any mortgage then encumbers the property.

(g) Trustee's Deed to Non-Beneficiary: Tax is due on ~~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 due 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 If Y pays \$20 cash for Y's 50% interest in the property, then stamp tax is~~ 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 ~~689.073(1)~~ ~~689.071(4)~~, F.S., or declares the interest of the beneficiaries is personal property as specified in Section ~~689.071(6)~~ ~~(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(1), 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, 12-12-19, ____.

12B-4.014 Conveyances Not Subject to Tax.

(1) through (2) No change.

(3) To Correct Error: ~~If Where a deed corrects conveyance is made to correct a technical deficiency in a previous deed in the nature of a scrivener's error, and the correcting deed does not convey an interest in real property, on which the correcting deed is not subject to 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) through (5) No change.

(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 ~~is~~ 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 ~~are not taxable when the only consideration is the wherein considerations passing to lessors are lessee's promise to pay 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 ~~Nonexempt~~ ~~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 ~~nonexempt non-exempt~~ party.

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

(9) Mortgagee to United States; Contract of Guaranty: Conveyance from a bank, savings and loan association,

or other mortgagee to a 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.~~

~~(12)~~(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.~~

~~(13)~~(14) An assignment, transfer, or other disposition of real property from a nonprofit organization, as defined in Section 201.02(6), F.S., to the Board of Trustees of the Internal Improvement Trust Fund, or 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 Documentary Stamp Tax – Subsection 201.02(6), Florida Statutes, Exemption Form DR-229 (form DR-229, Documentary Stamp Tax – Section 201.02(6), F.S., Exemption, incorporated by reference in Rule 12B-4.003, F.A.C.).

~~(14)~~(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)~~)

Rulemaking Authority 201.11(1), 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) No change.

(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 will ~~shall~~ require tax. Tax on bonds is measured by the face value, regardless of whether the bonds are 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.~~)

Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.07 FS. History— New 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 other evidence of an indebtedness deed of trust which is recorded in Florida securing a bond or a certificate of indebtedness, whether issued inside or outside Florida, this state~~ is subject to the tax under Section 201.08(1)(b), F.S., based on the amount secured.

(2) Religious or Nonprofit Organizations ~~Non-Profit Corporation:~~ Bonds ~~A bond~~ issued by religious or nonprofit organizations are ~~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))~~

Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.07, 201.08(1)(b) FS. History—New 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) No change.

(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))~~

~~(3)(4) Bond Issued in Another State: Where all steps in the issuance of a bond bonds by Florida corporation take took place outside Florida out of the state, the bond 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 Florida this state, the mortgage or trust deed is taxable under Section 201.08(1)(b), F.S.~~

~~(4)(5) Governmental Bonds: All notes, bonds, mortgages, deeds, and other evidences of indebtedness issued or, sold, transferred, assigned or delivered by federal or state agencies, counties, municipalities, or any political subdivisions are exempt 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))~~

Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.07 FS. History—New 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 will ~~shall~~ not exceed \$2,450.

~~Cross Reference—paragraph (12)(c) 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 must ~~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 \$2,450 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 \$3,500 was due on the mortgage at the time of recordation.

~~Cross Reference—paragraph (12)(c) of Rule 12B-4.052, F.A.C.~~

Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.08 FS. History—New 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) No change.

(2) No change.

~~(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.~~

~~(3)(4)~~ Instruments Deemed Retail Installment Contract: An instrument which is in fact a retail installment contract is taxable under Section 201.08(1)(a), F.S., even though the instrument may be designated a revolving charge account.

~~(4)(5)~~ No change.

~~(5)(6)~~ Written Obligation or Promise to Pay Money:

(a) The tax levied by Section 201.08(1)(a), F.S., is an excise tax on the promise to pay, regardless of ~~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 note, a mortgage, or both, the 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 nonpayment ~~non payment~~, the contract constitutes a promise to pay and is taxable. (~~Maas Brothers, Inc. v. Dickinson, 195 So. 2d 193 (Fla. 1967)~~)

(b) 1. through 5. No change.

6. An integration clause or a default remedy clause, does not, by itself, expressly incorporate another document, unless the clause contains language that meets ~~meet~~ the criteria of subparagraph 12B-4.052(5)(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))~~

~~(6)(8)~~ No change.

~~(7)(9)~~ Interest: Where a 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))~~

~~(8)(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 will ~~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.

~~(9)(11)~~ No change.

~~(10)(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) No change.

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

~~Cross Reference—paragraph (e) of this subsection.~~

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

~~Cross Reference—paragraph (e) of this subsection.~~

(d) No change.

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

1. Example: The proper amount of tax of \$2,450 was paid on a term obligation of \$1,000,000, that was executed in Florida on July 1, ~~2024~~2002, and was not secured by a mortgage, security agreement, or other lien filed or recorded in Florida. On August 1, ~~2024~~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 \$2,450 was paid on the original obligation. Each renewal thereafter is not subject to additional tax, so long as each renewal meets the requirements of Section 201.09(1), F.S.

2. Example: The proper amount of tax of \$1,750 was paid on a revolving obligation of \$500,000, that was executed in Florida on July 1, ~~2024~~2002, and was not secured by a mortgage, security agreement, or other lien filed or recorded in Florida. On August 1, ~~2024~~2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$500,000 increase above the original face amount of the original obligation. Additional tax of \$700 was due on the renewal, bringing the total tax paid on the original obligation and all renewals thereof to the maximum aggregate amount of \$2,450. Each renewal thereafter is not subject to additional tax, so long as each renewal meets the requirements of Section 201.09(1), F.S.

3. Example: The proper amount of tax of \$1,750 was paid on a revolving obligation of \$500,000, that was executed in Florida on July 1, ~~2024~~2002, and was not secured by a mortgage or other lien filed or recorded in Florida. On August 1, ~~2024~~2002, the obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$100,000 increase above the original face amount of the original obligation. Additional tax of \$350 was due on the renewal, bringing the aggregate tax paid on the original obligation and this renewal to \$2,100. Additional tax of \$350 will be due on any renewal or renewals thereafter, where the amount of the increase or increases equals or exceeds \$100,000 (the amount of the increase or increases required to bring the aggregate tax to \$2,450).

4. Example: The proper amount of tax of \$2,450 was paid on a term obligation of \$700,000, that was executed in Florida on July 1, ~~2024~~2002, and was secured by a mortgage recorded in Florida. On August 1, ~~2024~~2002, the

obligation was renewed, meeting the requirements of Section 201.09(1), F.S., and providing for a \$500,000 increase of the unpaid principal balance. The mortgage was spread to secure the renewal. Additional tax of \$1,750 was due on the mortgage spreader, since there is no limit on the amount of tax due on a mortgage.

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

1. through 2. No change.

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

a. No change.

b. A renewal mortgage or other security document must ~~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 must ~~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. No change.

(g) through (h) No change.

~~(11)(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 or not the obligation to repay is~~ 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))~~

Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.08, 201.09 FS. History—New 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, 5-23-22, ____.

12B-4.053 Taxable Documents.

(1) Signature Required: Tax is due on a document that contains a promise to pay, ~~“Promise to Pay”~~ and on each renewal thereof. ~~To be taxable, the document 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 the “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))~~

~~(3)(4) Executed to Governmental Agencies or Instrumentalities: Instruments made payable to the United States, or 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))~~

~~(4)(5) Right to Rescind: Lot purchase contracts in existence beyond a stated period of time without having been rescinded by the 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))~~

~~(5)(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 must evidence ~~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 tax stamps and the amount thereof made on the promissory note.~~

~~(6)(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))~~

~~(7)(10) Credit Unions: A promise to pay ~~“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.~~

~~(8)(11) Demand Loans: Demand loans that ~~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))~~

~~(9)(13) No change.~~

~~(10)(14) Religious or Nonprofit Organizations ~~Non-Profit Church Corporation: A note or other obligation to pay money “Promise to pay” executed by a religious bodies or nonprofit organization ~~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))~~

~~(11)(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.~~

~~(12)(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))~~

~~(13)(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))~~

~~(14)(19) Assumption of Note and Mortgage: An 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, any and mortgage, or both, 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)(a), 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(5)(6) and (11)(12), 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) through (22) Renumbered (15) through (16) No change.

~~(17)(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, or a mineral contract, etc., is taxable as a conveyance of an interest in realty under Section 201.02(1)(a), F.S., and is also taxable as a written obligation to pay money under Section 201.08(1)(a), F.S. ~~(1971 Op. Att’y. Gen. Fla. 071-30 (Feb. 19, 1971))~~

~~(18)(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, even if ~~regardless of whether~~ the indebtedness is contingent. An agreement or contract ~~Agreements or contracts~~ for the sale of land; that is which are not recorded and contains contain no written obligation to pay money is 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.

~~(19)(25)~~ “Wrap-Around” Notes: Tax ~~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.~~

~~(20)(27)~~ Assignment of Mortgage: The ~~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 Florida ~~this state~~.
Cross Reference – subsection 12B-4.054~~(4)(5)~~, F.A.C.

~~(21)(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 \$2,450, whether or not funds are advanced at time

of delivery. If the note is secured by a recorded mortgage, tax ~~must~~ 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 \$2,450 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)(c) of Rule 12B-4.052, F.A.C.~~

~~(22)(29)~~ Student Loans: All notes executed by students for loans that are guaranteed by the federal government ~~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.~~

~~(23)(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 \times 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 \times (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 ~~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. In such case, ~~Then~~ the tax will be based upon the value of the Florida property. In ~~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 \times 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 \times (3) \$550,000 = \$440,000*

*Tax is calculated upon the pro rata ~~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 ~~pro-rata~~ amount of the indebtedness.

Example 2:

Value of Florida property/Total value of all property \times 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 \times (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 ~~pro-rata~~ amount of the loan, since the value of the Florida property is more than the pro rata ~~pro-rata~~ amount of the indebtedness.

Example 3:

Value of Florida property/Total value of all property \times 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 \times (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 ~~pro rata~~ amount of the loan.

~~(24)(32)~~ In-State Notes – Secured by Florida Mortgage: ~~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, the tax is due on the full amount of the note for notes up to \$700,000 (with a maximum tax due of \$2,450). ~~For notes larger than \$700,000, the tax is due on at least \$700,000, 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 \$2,450)~~ 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, the tax is due on the full amount of the note for notes up to \$700,000 (with a maximum tax due of \$2,450). ~~For notes larger than \$700,000, the tax is due on \$700,000, 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, 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 \$2,450)~~ 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) through (34) Renumbered (25) through (26) No change.

Rulemaking Authority 201.11(1), 213.06(1) FS. Law Implemented 201.01, 201.08 FS. History—New 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) No change.

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

(3) through (4) Renumbered (2) through (3) No change.

~~(4)(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(20)(27), F.A.C.

~~(5)(6) Assignment of Conditional Sale Contract: An assignment of a conditional sale contract is does not come within the terms of the Documentary Stamp Tax Act. Therefore, such assignments are not taxable. However, the assignment of a contract as collateral security for a new loan, when recorded in Florida 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))~~

~~(6)(7) Unsigned Documents: A note or written obligation to pay money which is not signed by a 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.~~

~~(7)(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(4)(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.~~

~~(8)(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 or her own bank or upon some other bank, in which funds of his or her bank are deposited, and is not a written obligation for the payment of money. No as contemplated by the provisions and requirements of the Documentary Stamp Tax Act. Therefore, no tax is due required on a cashier’s check 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))~~

~~(9)(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))~~

~~(10)(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))~~

~~(11)(19) Travelers Travel Checks: A travelers travel check is issued by a the bank that 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: 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. The~~

~~maximum tax due on a banker's or trade acceptance is \$2450. 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))~~

~~(12)(22) Military Bases – Written Obligation to Pay Money: Written obligations to pay money executed and delivered on military bases are not taxable. However, any recorded documents evidencing such indebtedness are subject to will require tax. (1963 Op. Att'y. Gen. Fla. 063-136 (Nov. 13, 1963))~~

~~(13)(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.~~

~~(14)(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.~~

~~(15)(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 Chapters ~~Chapter~~ 159 and 420, F.S., are exempt from tax under Section~~

~~Chapter~~ 201.08, F.S.

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

~~(16)(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 Florida ~~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 201.23(4)(b) ~~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 will ~~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.~~

~~(17)(28)~~ International Banking Transactions:

(a) ~~Tax 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 201.23(4)(b) ~~199.023(9)~~, F.S., in the conduct of an international banking transaction, as defined in Section 201.23(4)(b) ~~199.023(9)~~, 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.~~

~~(b)(e)~~ 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

~~does shall~~ not qualify for the exemption.

~~(c)(4)~~ The lender must ~~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(30), F.A.C.~~

~~(18)(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. ~~A However, a notation relative to stamp tax is required on the UCC Financing Statement~~ must ~~whether tax is due or not. The notation shall state that the stamp tax has proper stamp taxes under Chapter 201, F.S., have been paid placed on the promissory instruments and will be paid placed on any additional promissory instrument, or that no tax is due not required.~~

~~Cross Reference—subsection 12B 4.053(32), F.A.C.~~

~~(19)(30)~~ No change.

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