From: Brown, French
To: RuleComments
Cc: Brinton Hevey; Burt Bruton; Roger Beasley
Subject: Re: Rule 12B-4 - Documentary Stamp Taxes
Date: Tuesday, October 21, 2025 9:20:56 PM
Attachments: image001.png
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FDOR Workshop re Chapter 12B-4.msg

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Brinton,

We also think the following language could resolve the issue:

> 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 not to exceed $700,000 ~~(with a maximum tax due of $2,450)~~ or the amount which the mortgage limits recovery, whichever is greater.

Thank you.

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> On Oct 21, 2025, at 3:47 PM, Brown, French <fbrown@joneswalker.com> wrote:
>
> Brinton,
>
> Good afternoon. The Real Property Probate, and Trust Law Section of the Florida Bar appreciates the changes made by the Department based on comments in August from the Section regarding the proposed documentary stamp tax rules.
>
> We believe there is still additional clarification needed regarding proposed rule 12B-4.053(24) – in state notes. In the first sentences of paragraphs (24)(a) and (b), the Department replaces former language related to the "maximum tax due of $2,450" with "notes up to" and "larger than" $700,000. We understand why the Department proposed these clarifying changes. However, in the second sentence, the Department only removes the "maximum tax due of $2,450" thereby providing that *full amount of the uncapped note* or the amount which the mortgage limits recovery, whichever is greater. Under the proposed language, if the full amount of the note exceeds $700,000, the language would propose taxes on the "full amount." The Section believes that this second sentence in these paragraphs should also be limited to $700,000 like the first sentence. Please see the attached pdf for our proposed clarification.

Let us know if you have additional questions.   We're still contemplating the potential need to request the November 4th Rule Hearing on this proposed rule.

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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 x ~~*~~ 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 x ~~*~~ (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 x ~~*~~ 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 x ~~*~~ (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 x ~~*~~ 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 x ~~*~~ (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. ~~:~~ A mortgage recorded in Florida ~~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. For notes larger than $700,000, the tax is due on at least $700,000, or ~~(with a maximum tax due of $2,450)~~ 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 $700,000 ~~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. For notes larger than $700,000, the tax is due on $700,000, or ~~(with a maximum tax due of $2,450),~~ 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 $700,000 ~~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.