

SUMMARY

QUESTION: Is the Loan Agreement or Guaranty subject to documentary stamp tax if either or both are executed in Florida.

ANSWER: The Loan Agreement and Unconditional Guaranty will not be subject to tax since neither document contains an unconditional promise to pay a sum certain, nor do they incorporate any other document.

January 18, 2008

Re: Technical Assistance Advisement No. 08B4-001

Documentary Stamp Tax-Loan Agreement
Section 201.08(1) and (6), F.S
Rule 12B-4.053(1) and 12B-4.054(4), (7) and (11), F.A.C

XXX(hereinafter Bank)

Dear XXX:

Your letter requesting a Technical Assistance Advisement has been referred to this office for response. The specific scenario for which advice has been requested is summarized below.

Facts as Presented by Petitioner

The Bank conducts business in Florida and in multiple states through separate business locations in those states. One of the many business activities conducted by the Bank is the making of loans to customers. The Bank has created an XXX ("Loan Agreement") and Unconditional Guaranty ("Guaranty") in efforts to streamline, standardize and minimize the documentation process required to evidence a loan. The Loan Agreement and Guaranty have also been designed to be used in multiple jurisdictions. It is anticipated that a customer (a "Borrower") needing a loan will complete a verbal application. Upon the Bank approving and authorizing the loan, the Borrower would be notified of the approval. Then the Borrower will sign the Loan Agreement and provide a Guaranty from a guarantor, if required. Neither the Loan Agreement nor Guaranty will be recorded in the Florida County's public records. In some situations, the guarantor will secure its obligations under the Guaranty by a pledge of Florida real property. In some cases, the guarantor will secure its obligation under the Guaranty by granting a security interest in personal property located in Florida. However, the security agreement will not be recorded in Florida County's public records. For purposes of this request for Technical Assistance Advisement, it is to be assumed that neither the Borrower nor the Guarantor secures its obligations under the Loan Agreement and Guaranty, respectively, with a mortgage on real property recorded in Florida or security interest in personal property located in Florida.

As described in the Loan Agreement, the borrower will obtain the funds from the loan through one or more of the following methods:

- The use of an XXX furnished to the borrower for that purpose;
- The use of a debit card;
- The use of an internet request; or
- From a teller at the branch office of the Bank

Copies of the Loan Agreement, Unconditional Guaranty and Access Check have been furnished for review.

Request for Advisement

A Technical Assistance Advisement is being requested to address whether the Loan Agreement or Guaranty are subject to Florida documentary stamp tax if either one or both are executed or delivered by a Borrower or Guarantor, in the State of Florida.

Provisions of Law and Discussion

Section 201.08(1), F.S., imposes documentary stamp tax on promissory notes and written obligations to pay money executed or delivered in the State of Florida. The tax rate is \$.35 per \$100 or fraction thereof of the obligation evidenced thereby.

Pursuant to s. 201.08(6), F.S., the taxability of the document is determined solely from the face of the document and from any other documents expressly incorporated into the document.

Rule 12B-4.052(6), F.A.C., provides that a document does not expressly incorporate another document by implication or by mere reference and description of the other document.

Rules 12B-4.053(1) and 12B-4.054(4) and (7), F.A.C., provide that a promise to pay must be signed, fixed and absolute to be subject to tax.

Position of the Department

The Loan Agreement and Unconditional Guaranty provided for review are not subject to tax under paragraph 201.08(1)(a), F.S., as independent documents, since neither document contains an unconditional promise to pay or repay a sum certain in money and a signature of the borrower. It is also determined that neither document contains language that expressly incorporates it with any other documents reviewed. In such case, no two or more documents can be considered a single instrument for documentary stamp tax purposes.

This determination is based on review of only those documents that were submitted. If other documents are used during the loan process, a different determination might result.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in s. 213.22, F.S. Our response is predicated on those facts

and the
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specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Celestine Grantham Turner
Tax Law Specialist
Technical Assistance and Dispute Resolution

CG/mh

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