

## NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

DOCUMENTARY STAMP TAX

RULE NO:   RULE TITLE:

12B-4.003   Public Use Forms

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

PURPOSE AND EFFECT: Section 201.02(1)(b), F.S., created by Chapter 2009-131, Laws of Florida (L.O.F.), imposes tax on transfers of ownership interests in a conduit entity when the transfer is within three years of a transfer of Florida real property into the conduit entity, and documentary stamp tax was not paid on the full consideration when the real property was transferred into the conduit entity. The purpose of the creation of Rule 12B-4.060, F.A.C. (Tax on Transfers of Ownership Interest in Legal Entities), is to clarify the application of the tax. The purpose of the proposed amendments to Rule 12B-4.003, F.A.C., is to adopt, by reference, changes to Form DR-228 (Documentary Stamp Tax Return for Nonregistered Taxpayers' Unrecorded Documents) to provide for payment of the tax when documents to transfer ownership in a conduit entity are not filed or recorded.

SUMMARY: The creation of Rule 12B-4.060, F.A.C. (Tax on Transfers of Ownership Interest in Legal Entities), provides: (1) definitions of the terms "conduit entity" and "full consideration" for purposes of the rule; (2) that tax is due on the transfer of an ownership interest in a conduit entity that occurs within three years of the transfer of real property to the conduit entity; (3) that tax is due on the amount of consideration paid or given for the ownership interest in the conduit entity and how the tax is to be computed; (4) when the tax is due and how the tax is to be remitted to the Department; (5) that tax is not due on a gift of ownership interest in the conduit

entity or transfers of equity interest that are traded on public regulated security exchanges; (6) that the discretionary surtax imposed in Miami-Dade County applies to transfers of ownership as provided in the rule; (7) that provisions of this rule do not affect the tax imposed under Section 201.02(4), F.S., on documents which convey or transfer, pursuant to Section 689.071, F.S., any beneficial interest in lands, tenements, or other real property; and (8) examples of when the tax is due.

The proposed amendments to Rule 12B-4.003, F.A.C. (Public Use Forms), adopt, by reference, changes to Form DR-228 (Documentary Stamp Tax Return for Nonregistered Taxpayers' Unrecorded Documents), to provide for the reporting of the tax imposed under section 201.02(1)(b), F.S., when the transfer of ownership in a conduit entity is not filed or recorded in Florida.

#### SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND

LEGISLATIVE RATIFICATION: The Agency has determined that this rule will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A Statement of Estimated Regulatory Cost has not been prepared by the agency. The Agency has determined that the proposed rule is not expected to require legislative ratification based on the Statement of Estimated Regulatory Cost or if no Statement of Estimated Regulatory Cost is required, the information expressly relied upon and described herein: 1) no requirement for the Statement of Economic Regulatory Costs (SERC) was triggered under Section 120.541(1), F.S.; and 2) based on past experiences with activities for providing the public tax information and rules of this nature, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a Statement of Estimated Regulatory Costs, or provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

**RULEMAKING AUTHORITY:** 201.11, 213.06(1) FS., s. 6, Ch. 2009-131, L.O.F.

**LAW IMPLEMENTED:** 119.071(5), 201.01, 201.02(1), (4), 201.031, 201.07, 201.08(1)(a), 201.133 FS.

**A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:**

**DATE AND TIME:** October 26, 2011, 10:00 a.m.

**PLACE:** 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida

**NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT:** Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850) 617-8346. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800) 955-8770 (Voice) and (800) 955-8771 (TDD).

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Tim Phillips, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7224.

**THE FULL TEXT OF THE PROPOSED RULES IS:**

STATE OF FLORIDA  
DEPARTMENT OF REVENUE  
CHAPTER 12B-4, FLORIDA ADMINISTRATIVE CODE  
DOCUMENTARY STAMP TAX  
AMENDING RULE 12B-4.003  
CREATING RULE 12B-4.060

12B-4.003 Public Use Forms.

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

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department's Internet site at [www.myflorida.com/dor/forms](http://www.myflorida.com/dor/forms); or, 2) calling the Department at (800)352-3671, Monday through Friday, 8:00 a.m. to 7:00 p.m., Eastern Time; 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 Department's TDD at (800) 367-8331 or (850) 922-1115.

Form Number	Title	Effective Date
(2) No change.		
(3) DR-228	Documentary Stamp Tax Return for Nonregistered Taxpayers' Unrecorded Documents	

(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 FS. History—Revised 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, 06-28-10, \_\_\_\_.

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

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

(b) Definitions. For purposes of this rule:

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

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

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

(3) The tax is based on the consideration paid or given for the ownership interest in the conduit entity, which includes the amount of any mortgage attached to real property that was

transferred to the conduit entity, less the consideration upon which tax was paid on the transfer of the Florida real property to the conduit entity. No refund is due of tax paid on the document that transferred the property to the entity solely because the consideration for the ownership interest in the conduit entity is less than the consideration for the property transferred. If the conduit entity owns assets other than the real property described in subsection (2), tax is calculated by multiplying the consideration for the interest in the conduit entity by a fraction, the numerator of which is the value of the real property described in subsection (2) and the denominator of which is the value of all assets owned by the conduit entity, and then multiplying the result by the tax rate.

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

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

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

(b) When the 20<sup>th</sup> day falls on a Saturday, Sunday, or legal holiday, payments accompanied with returns will be accepted as timely if postmarked on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this rule, a "legal holiday"

means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and Section 7503 of the Internal Revenue Code of 1986, as amended. A “legal holiday” pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an Internal Revenue district.

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

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

(9) Examples.

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

(b) Example 2: On July 2, 2009, Calvin and Sally transferred Duval County, Florida real property (the real property), which they owned equally, to a limited liability company (LLC) owned equally by Calvin and Sally. The full consideration at the time of the transfer was \$30,000. Documentary stamp tax of \$210 was paid on the document that transferred the real property to the LLC. On July 10, 2009, Calvin and Sally sold their ownership interests in the

LLC. No documentary stamp tax was due on the transfer of Calvin's and Sally's ownership interests in the LLC, since no "conduit entity" was created pursuant to Section 201.02(1)(b)1.a., F.S., and this rule, since tax was paid on the full consideration for the real property when it was transferred to the LLC.

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

(d) Example 4: On July 2, 2009, Pam and Mike transferred Walton County, Florida real property (the real property), which they owned equally, to a corporation. The corporation was owned equally by Mike and a limited liability company (LLC) owned by Pam alone. No documentary stamp tax was paid on the document that transferred the real property to the corporation. On July 10, 2009, Pam sold her interest in the LLC (thereby selling her indirect ownership interest in the corporation) for \$45,000. The corporation owned assets in addition to the real property transferred to it on July 2, 2009. The value of the real property was \$85,000, and the real property made up 95% of the value of all assets owned by the corporation. The only asset owned by the LLC was its interest in the corporation. Tax of \$299.60 was due on the transfer of Pam's ownership interest based on consideration of \$42,750 (\$45,000 multiplied by the 95% attributable to the real property), since tax was not paid on the full consideration for the

real property when it was transferred to the corporation.

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

(f) Example 6: On July 2, 2009, Sue transferred Polk County, Florida real property (the real property), owned by her alone, to a limited liability company (LLC) she owned alone. The real property was encumbered by a mortgage at the time of the transfer of an amount less than the property's fair market value. The LLC owned no assets other than the real property. Documentary stamp tax of \$525 was paid on the document that transferred the real property to the LLC based on the mortgage balance of \$75,000. On July 31, 2009, Sue sold her interest in the LLC for \$110,000. Tax of \$245 was due on the transfer of Sue's ownership interest in the LLC based on consideration of \$35,000, the amount beyond the consideration on which tax was paid when the property was transferred to the LLC.

Rulemaking Authority s. 6, Ch. 2009-131, L.O.F. Law Implemented 201.02(1), (4), 201.031 FS.

History-New .

NAME OF PERSON ORIGINATING PROPOSED RULES: Tim Phillips, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7224.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULES: Governor and Cabinet

DATE PROPOSED RULES APPROVED BY AGENCY HEAD: September 20, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on December 31, 2009 (Vol. 35, No. 52, pp. 6696-6697). A rule development workshop was held on January 27, 2010, to receive public comment. In response to public comment received, a second Notice of Proposed Rule Development was published in the Florida Administrative Weekly on July 29, 2011 (Vol. 37, No. 30, pp. 2186-2187). No comments were received by the Department at a rule development workshop held on August 16, 2011.