

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC HEARING

The Department of Revenue announces a public hearing to which all persons are invited.

DATE AND TIME: January 12, 2012, 2:00 p.m.

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

SUBJECT MATTER TO BE CONSIDERED: Proposed changes to Rule 12B-4.003, F.A.C.

(Public Use Forms), and proposed Rule 12B-4.060, F.A.C. (Tax on Transfers of Ownership

Interest in Legal Entities), as published in Vol. 37, No. 39, pp. 2985-2988, September 30, 2011,

issue of the Florida Administrative Weekly. A Notice of Change is published in this issue of the

Florida Administrative Weekly.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring

special accommodations to participate in any rulemaking proceeding before the Technical

Assistance and Dispute Resolution Office 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).

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; 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, or its successor entity, to which real property is transferred without full consideration by a grantor who owns a direct or indirect interest in the entity.

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

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

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

transferred to the conduit entity. If the conduit entity owns assets other than the real property referred to in subsection (2), tax is calculated by multiplying the consideration for the interest in the conduit entity by the tax rate and then multiplying the result by a fraction, the numerator of which is the value of the real property referred to in subsection (2) and the denominator of which is the value of all assets owned by the conduit entity.

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

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

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

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

location outside the District of Columbia but within an Internal Revenue district.

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

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

(9) Examples.

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

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

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

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

(e) Example 5: On July 2, 2009, Tom transferred Broward County, Florida real property (the real property), owned by him alone, to a limited liability company (LLC) he owned alone. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 10, 2009, Tom sold 50% of his interest in the LLC to Imogene for \$200,000. The

LLC owned no assets other than the real property. Tax of \$1,400 was due on the transfer of Tom's 50% ownership interest in the LLC based on consideration of \$200,000, since documentary stamp tax was not paid on the full consideration for the real property when it was transferred to the LLC. On July 25, 2009, Tom sold one-half of his remaining 50% ownership interest in the LLC for \$105,000, and Imogene sold one-half of her 50% ownership interest in the LLC for \$105,000. Tax of \$735 was due on the transfer of Tom's ownership interest, since tax was not paid on the full consideration for the real property when it was transferred to the LLC. No tax was due on Imogene's transfer, since tax was due and paid on Tom's transfer to Imogene.

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

Rulemaking Authority 201.11, 213.06(1) FS. Law Implemented 201.02(1), (4), 201.0201, 201.031 FS. History-New _____.