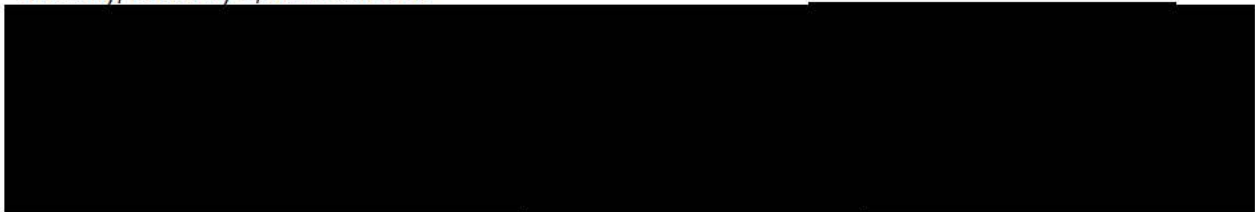

From: Burnette, Cindy (USTP)
Sent: Monday, February 3, 2014 5:15 PM
To:



Cc: Tampa; Barfus, Heather (USTP); Boylan, Karen R. (USTP); Brooks, Michelle (USTP); Childers, Cheryl (USTP); Ewen, Sheri (USTP); Fordham, Charles A. (USTP); Garmon, Nathan P. (USTP); Hodge, Mark (USTP); Luce, Lori L. (USTP); McGuire-Gonzalez, Allysan (USTP)

Subject: Doc stamps on chapter 7 trustee sales of real property

Importance: High

Dear Chapter 7 Trustees:

Please be advised that should you conduct a sale of real property or any interest therein by Motion, Adversary Proceeding or through the Report and Notice of Sale process, you must ensure that the appropriate documentary stamp tax is **collected and paid**. If you do not ensure that the appropriate documentary stamp tax is **collected and paid**, you are needlessly and recklessly exposing the bankruptcy estate and yourself to liability that exceeds the benefit of the sale to the estate or renders any such benefit meaningless.

The State of Florida, Department of Revenue, recently informed the United States Trustee that the following statute and code provisions apply to trustee sales of real estate with negative equity, even though the property is being sold subject to any mortgages or liens:

The 2013 Florida Statutes [emphasis added]:

Title XIV
TAXATION AND
FINANCE

Chapter 201
EXCISE TAX ON
DOCUMENTS

View Entire
Chapter

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

¹(1)(a) On deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any other person by his or her direction, on each \$100 of the consideration therefor the tax shall be 70 cents. When the full amount of the consideration for the execution, assignment, transfer, or conveyance is not shown in the face of such deed, instrument, document, or writing, the tax shall be at the rate of 70 cents for each \$100 or fractional part thereof of the

consideration therefor. **For purposes of this section, consideration includes, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed.** If the consideration paid or given in exchange for real property or any interest therein includes property other than money, it is presumed that the consideration is equal to the fair market value of the real property or interest therein. The Florida Administrative Code provision (in pertinent part) [emphasis added]:

12B-4.002 Liability for Tax.

(1)(a) Liability in general – Except as otherwise provided in paragraphs (2) and (3) of this rule, the tax is payable by any of the parties to a taxable transaction. The parties to the transaction may agree among themselves as to who shall pay the tax, but such agreements do not relieve the others from their liability in the event the agreement is not followed.

(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)

(c) Cooperative Apartment – Only the purchaser is liable for the payment of the tax.

(2) United States, Its Agencies or Instrumentalities

(a) Transactions between non-exempt parties and the United States, its agencies or instrumentalities are taxable unless such transactions are evidenced by documents which have been exempted by Congress.

(b) Mortgages and notes executed by 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.

(c) Mortgages and notes between 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 one of the following agencies or instrumentalities 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 the tax with respect to a document transferring any interest in realty to which it is a party. However, the transaction is not exempt from tax, and the non-exempt party to the 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.

Based on the above statute and code sections, it is the position of the Florida Department of Revenue that the documentary stamp tax is calculated to include, as part of the consideration for such transfer, the outstanding principal amount of the mortgage(s) encumbering the property. The Florida Department of Revenue asserts that the obligation is both joint and several, and non-delegable, regardless of any agreement between the parties. This means that even if the purchaser/grantee in the sale agreed to pay the documentary stamp tax you are liable if it does not.

Attorneys for the Florida Department of Revenue have informed us that they anticipate taking the following actions:

An audit of all trustee sales within the last two years in the State of Florida to determine whether the documentary stamps were paid in the correct amount; and

Billing all parties to the real estate transactions to assert the liability for any underpaid documentary stamp obligations.

Accordingly, you should review all sales of real estate which have occurred during the last 2 years to determine whether there is any potential liability to the estate and take action as appropriate. We are suspending the processing of Trustee Final Reports which include the sale of any property with negative equity to afford you an opportunity to review the case before distribution is made to creditors. **If you have not instructed us to withdraw a Trustee Final Report by close of business on Wednesday, February 19, 2014, we will process the Trustee Final Report through the normal process.**

Thank you for your attention to this issue. Kind regards.

On behalf of

Guy G. Gebhardt
Acting United States Trustee/Region 21

Cynthia P. Burnette

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