
From: Burnette, Cindy (USTP)
Sent: Friday, March 28, 2014 12:27 PM
To: [REDACTED]
Subject: Sales of Real Estate in Florida
Attachments: Doc stamps on chapter 7 trustee sales of real property; Certification by Trustee_doc stamp issue.docx
Importance: High

Dear Trustees:

We recently notified you of the Florida Department of Revenue's position with regard to Florida Statute 201.02, and the requirement to pay the appropriate excise taxes (documentary stamps) on real estate transfers conducted in the State of Florida. (See attached email of 02/03/2014.) At that time, we provided you with an opportunity to withdraw any Trustee Final Reports where no payment or insufficient payment of the excise tax may be an issue and asked that you take appropriate action.

Please be aware that any tax incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, is an administrative expense of the estate. 11 U.S.C. § 503(b)(1)(B)(i). *Handbook for Chapter 7 Trustees* 4-8.

Governmental units are not required to file a request for the payment of an expense as a condition of its being an allowed administrative expense. 11 U.S.C. § 503(b)(1)(D).

The trustee has an obligation to pay tax liabilities on behalf of the bankruptcy estate. Failure to file or pay taxes could result in penalties and interest which will reduce the amounts paid to creditors and may subject the trustee to personal liability. *Handbook for Chapter 7 Trustees* 4-7.

The trustee is a fiduciary charged with protecting the interests of all estate beneficiaries, namely, all classes of creditors, including those holding secured, administrative, priority and non-priority unsecured claims. *Handbook for Chapter 7 Trustees* 4-2

We are concerned that TFRs are continuing to be submitted where there may be outstanding administrative claims for Florida excise taxes (documentary stamps) which are not addressed in the distribution reports.

The United States Trustee reviews the TFR to assess whether the trustee has properly and completely administered estate property. Any deficiencies in the trustee's administration or other problems or mistakes are brought to the trustee's attention for corrective action.

To ensure that trustees are in compliance with Florida Statute 201.02 and that all administrative claims are addressed, we ask that you submit the attached certification in each case where real property of the

estate was sold subject to any liens and encumbrances. If we receive the certification, and are satisfied that all matters have been properly addressed, we will file the TFR with the court. If there is a dispute between the United States Trustee and the trustee concerning the report and the proposed distribution, the United States Trustee will file an objection.

Please contact Cynthia Burnette by email at Cindy.P.Burnette@usdoj.gov, if you have any questions regarding these procedures.

In Re: _____
Chapter 7 Debtor(s)

Case No. _____


I HEREBY CERTIFY THAT I am the duly appointed chapter 7 trustee of the above referenced estate. In the course of administration of the estate, and in accordance with my duties as chapter 7 trustee, I liquidated real property owned by the estate and located at _____.

I FURTHER CERTIFY THAT the excise tax (documentary stamp tax), due and owing upon transfer of real property located in the State of Florida, was paid in full in accordance with Florida Statute ' 201.02 and that the Deed transferring the real property to the purchaser was filed with the Clerk of the Court in the County where the property is located, as evidenced by the copy of the first page of the Deed provided herewith.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Date: _____

Sign: _____
(Print Name) Chapter 7 Trustee

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]:

<u>Title XIV</u>	<u>Chapter 201</u>	<u>View Entire</u>
TAXATION AND	EXCISE TAX ON	<u>Chapter</u>
FINANCE	DOCUMENTS	

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

Assistant United States Trustee
Office of the United States Trustee
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Tampa, Florida 33602
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