

Documentary stamp tax, Commodity Credit Corp.

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Dr. James A. Zingale, Ph.D
Executive Director
Department of Revenue
5050 West Tennessee Street
Tallahassee, Florida 32399-0100

Dear Dr. Zingale:

You have been contacted by Representative Greg Evers to determine whether promissory notes payable to the Commodity Credit Corporation (CCC) are subject to the documentary stamp tax imposed pursuant to section 201.08(1), Florida Statutes. If so, you ask whether the maker of the note, a private individual who would otherwise be subject to the tax, is responsible for payment of the documentary stamp tax and whether the CCC must remit any tax due on the note prior to its being recorded.

Due to the interrelated nature of your questions, they will be discussed together.

Section 201.08(1), Florida Statutes, imposes a tax of 35 cents on each \$100 or fraction thereof of an indebtedness or obligation evidenced by "promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, executed, delivered, sold, transferred, or assigned in the state. . . ."[1] The Legislature has provided several exemptions to the taxes imposed pursuant to Chapter 201, Florida Statutes.[2] It has been recognized that obligations executed by the United States or its agencies, as well as by the state, counties, municipalities or political subdivisions are exempt from taxation.[3]

Section 201.01, Florida Statutes, in pertinent part, provides:

"Unless exempt under s. 201.24 or under any state or federal law, if the United States, the state, or any political subdivision of the state is a party to a document taxable under this chapter, any tax specified in this chapter shall be paid by a nonexempt party to the document. The documentary stamp taxes shall be paid on all recordable instruments requiring documentary stamp tax according to law, prior to recordation."

You state that the CCC is a federal agency created within the Department of Agriculture. As an agency of the United States, obligations executed by the CCC are immune from the tax imposed under Chapter 201, Florida Statutes.[4] However, this office has construed section 201.01, Florida Statutes, as expressing an intent not to exempt documents from taxation merely because one of the parties is exempt or immune.[5] Rather, the tax burden is shifted to the non-exempt party.[6]

Thus, the Legislature and courts of this state have recognized that while state or federal law may

exempt certain transactions from the documentary stamp tax, absent such an exemption, even if the United States is a party to a document subject to the documentary stamp tax, the tax must be paid by a nonexempt party to the document.

Although taxing statutes are strictly construed against a taxing authority, exemptions are strictly construed against the taxpayer.[7] A taxpayer claiming an exemption shoulders the burden of proving by clear evidence that he or she falls within the exemption.[8] Accordingly, the burden of showing that promissory notes executed by non-exempt parties to the CCC are exempt from the documentary stamp tax imposed by section 201.08, Florida Statutes, falls upon the party who is claiming the exemption.

The United States Department of Agriculture (USDA) has asserted that language in the Consolidated Farm & Rural Development Agricultural Act of 1961, created in Title 7 of the United States Code, provides that no documentary stamp tax may be imposed on the recording of a document to which the Secretary of the USDA is a party.[9] Shortly after passage of the 1961 act, this office concluded that promissory notes to pay money to the United States through the Farmers Home Administration were no longer subject to the documentary stamp tax.[10] However, while the Commodity Credit Corporation is created within the USDA, it is created under Title 15 of the United States Code and the department concedes that programs of the CCC are not governed specifically by the provisions of the 1961 act.[11] The language in Title 7, United States Code, refers only to documents administered under that title.[12] This office must read the provisions of the 1961 act within the context of the programs it was crafted to support and, absent express legislative direction, may not expand its coverage to the activities of the CCC. A review of the legislation creating the CCC reveals no similar language that exempts documents to which it is a party from documentary stamp taxes imposed by the state. Moreover, this office has been advised that historically the documentary stamp tax has been collected on promissory notes payable to the CCC.

Given the absence of clear statutory language or a judicial ruling exempting promissory notes payable to the Commodity Credit Corporation from the documentary stamp tax, it appears that the documentary stamp tax imposed under section 201.08, Florida Statutes, is applicable to promissory notes issued to the CCC.[13] Should there continue to be questions regarding the exemption of such documents from the documentary stamp tax, it may be advisable to seek legislative clarification.

I trust that these informal comments will be of assistance in resolving the issues that you have raised.

Sincerely,

Charlie Crist
Attorney General

CC/tls

[1] There is a \$2,450 cap on the tax imposed under s. 201.08(1), Fla. Stat. Subsection (b) of 201.08(1) imposes the same rate of tax, without a cap, on mortgages, trust deeds, security agreements, or other evidences of indebtedness.

[2] Section 201.21, Fla. Stat., exempts "principal obligations" secured by wholesale warehouse mortgage agreements when the excise tax has been paid on the collateral obligation and s. 201.23, Fla. Stat., exempts specified foreign notes and other written obligations executed and delivered outside the state.

[3] See Rule 12B-4.054(24), Fla. Admin. Code, stating: "Obligations Executed by Governmental Entities: No tax is required on obligations executed by the United States or its agencies, or by the state, counties, municipalities or any political subdivisions or agency of the state."

[4] See *also* 15 U.S.C. 713a-5, providing:

"Bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation under the provisions of sections 713a-1 to 713a-5 of this title shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation (except surtaxes, estate, inheritance, and gift taxes). The Commodity Credit Corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the Commodity Credit Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

[5] See Ops. Att'y Gen. Fla. 94-82 (1994), 91-54 (1991), and 75-206 (1975).

[6] See *Lewis v. The Florida Bar*, 372 So. 2d 1121 (Fla. 1979), in which the Court held that the imposition of the documentary stamp tax on The Florida Bar constituted an impermissible indirect tax on a tax immune body. Section 201.01, Fla. Stat., was subsequently amended by s. 6, Ch. 87-102, Laws of Fla., to shift the tax liability to the nonexempt party. *And see Choctawhatchee Electric Cooperative, Inc. v. Green*, 123 So. 2d 357, 358 (Fla. 1st DCA 1960) (private Florida corporation liable for the payment of documentary stamp tax on promissory notes executed by it and payable to the United States).

[7] See *Department of Revenue v. Bank of America, N.A.*, 752 So. 2d 637 (Fla. 1st DCA 2000), *review denied*, 776 So. 2d 274 (Fla. 2000) (statutes authorizing tax refunds or exemptions must be strictly construed); *Consumer Credit Counseling Service of the Florida Gulf Coast, Inc. v. State, Department of Revenue*, 742 So. 2d 259 (Fla. 2d DCA 1997); *State Department of Revenue v. Anderson*, 403 So. 2d 397 (Fla. 1981).

[8] *Green v. Pederson*, 99 So.2d 292 (Fla. 1957), and *United States Gypsum Co. v. Green*, 110 So. 2d 409 (Fla. 1959) (person seeking exemption bears the burden of establishing by clear evidence and law that he or she qualifies for the exemption, with all doubt resolved against the existence of the exemption).

[9] See Memorandum to Mr. Tim Phillips from Mr. Don Kronenberger, U.S. Department of Agriculture, Office of the General Counsel, April 28, 2003, citing to 7 U.S.C. s. 1921, *et seq.*, which includes s. 334, Public Law 87-128, providing:

"All property subject to a lien held by the United States or the title to which is acquired or held by the Secretary under this title other than property used for administrative purposes shall be subject to taxation by the State, territory, district, and local political subdivisions in the same manner and to the same extent as other property is taxed: *Provided, however,* That no tax shall be imposed or collected on or with respect to any instrument if the tax is based on --

- (1) the value of any notes or mortgages or other lien instruments held by or transferred to the Secretary;
- (2) any notes or lien instruments *administered under this title* which are made, assigned, or held by a person otherwise liable for such tax; or
- (3) the value of any property conveyed or transferred to the Secretary,

whether as a tax on the instrument, the privilege of conveying or transferring or the recordation thereof; nor shall the failure to pay or collect any such tax be a ground for refusal to record or file such instruments, or for failure to impart notice, or prevent the enforcement of its provisions in any State or Federal court." (e.s.)

[10] See Op. Att'y Gen. Fla. 61-160 (1961).

[11] See Memorandum to Mr. Tim Phillips, *supra.*, n. 7.

[12] See 7 U.S.C. s. 1921(2), *supra*, n.9, and 7 U.S.C. s. 1984(2), proscribing the imposition of a tax on "any notes or lien instruments *administered under this title* which are made, assigned, or held by a person otherwise liable for such tax[.]" (e.s.)

[13] This opinion is based on the premise that the loans discussed are made and administered under 15 United States Code, Chapter 15 - Economic Recovery. This premise derives from the July 18, 2003, letter from Department of Revenue General Counsel J. Bruce Hoffman to Florida Attorney General Charlie Crist, where Mr. Hoffman states on page 1: "The U.S. Government has developed a program to guarantee a floor price for certain farm crops in order to promote stability in commodity markets. ... The [Commodity Credit Corporation (CCC)] grants short term loans to farmers, while taking a security interest in the crops." These facts appear grounded in 15 U.S.C. s. 714 wherein the United States Congress created the CCC "[f]or the purpose of stabilizing, supporting, and protecting farm income and prices. . ." and 7 U.S.C. s. 714(c)(a), which includes among the CCC's specific powers the support of "prices of agriculture commodities through loans."