

12B-4.054 Exempt Transactions.

(1) Registered Security Dealers: Promissory notes for a duration of thirty days or less, made by a security dealer registered under the provisions of Chapter 517, F.S., shall be exempt from tax, provided these promissory notes are secured by a collateral security as defined in Section 517.021, F.S., and upon which the tax under Chapter 201, F.S., has been paid.

(2) Certificate of Deposit: Certificates of deposit issued by a bank, banking association, or trust company are exempt.

(3) Wholesale Warehouse Mortgage Agreements: All promissory notes, non-negotiable notes and other written obligations to pay money given pursuant to a wholesale warehouse mortgage agreement as provided under Section 201.21, F.S., shall be exempt from the tax only when the amount of tax due on or in respect to the collateral obligation(s) given as security has been paid. The exemption does not apply to the amount of the indebtedness evidenced by a note or other written obligation to pay money that is in excess of the amount of the indebtedness evidenced by such collateral obligation(s) given as security. The maximum of tax due on any excess of the indebtedness is \$2450.

(4) Contingent Obligations: A written promise to pay money which is not fixed and absolute at the time of execution is not subject to tax.

(5) Assignment of Mortgage: An assignment of a mortgage by a lender (mortgagee or owner of the asset) to a new lender who has purchased the note and mortgage and becomes the holder of the note and mortgage is not taxable. (*State v. Sweat*, 152 So. 432 (1934)). However, where the assignment of a mortgage is given as collateral security for a new loan, the assignment is a taxable mortgage when recorded in this state.

Cross Reference – subsection 12B-4.053(27), F.A.C.

(6) Assignment of Conditional Sale Contract: An assignment of a conditional sale contract does not come within the terms of the Documentary Stamp Tax Act. Therefore, such assignments are not taxable. However, the assignment of contract as collateral security for a new loan, when recorded in the state, is taxable. (1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 853 (Oct. 23, 1931); 1931 Op. Att’y. Gen. Fla. 1931-32 Biennial Report, Page 854 (Oct. 23, 1931)).

(7) Unsigned Documents: A note or written obligation to pay money which is not signed by maker or obligor is not taxable. (*Lee v. Quincy State Bank*, 127 Fla. 765, 173 So. 909 (1937)).

(8) Leases: A lease of tangible personal property which does not contain an unconditional obligation to pay money is not subject to tax, unless the lease provides that the lessee will become the unconditional owner of the property when the total of the rental payments equals the value of the property being leased.

(9) Agreement for Deed: No Personal Liability: Contracts for sale of land, which contain no “written obligation to pay money” of the same nature of promissory notes and non-negotiable notes, are not to be deemed written obligations to pay money within the purview of Section 201.08(1)(a), F.S. (*State v. Green*, 132 So. 2d 761 (Fla. 1961)) Attorney General Opinion 059-244 is construed as extending to contracts for the sale of land which contain express obligations to pay money, of the same genus as promissory notes and non-negotiable notes. With this limitation, Opinion 059-244 is adhered to and confirmed. (1961 Op. Att’y. Gen. Fla. 061-176 (Oct. 27, 1961)). If the following provision is incorporated in agreement for deed: “. . . as against the buyer or any subsequent purchaser from the buyer or any beneficiary for whom they may be acting, it being the understanding of the parties that the seller will look only to the land itself for payment of the balance of the purchase price,” there is no obligation to pay money in the contract and no documentary stamps are due. However, if such agreement for deed is filed or recorded in Florida, it would be subject to the documentary stamp tax under Section 201.08(1)(b), F.S.

(10) Rights to Rescind: Lot purchase contracts in existence beyond a stated period of time without having been rescinded by purchaser as provided for in the terms of the contract, constitute “written obligations to pay money” subject to documentary stamp tax, but contracts rescinded by purchasers within the stated time period are not subject to tax. (*Gulf American Land Corporation v. Green*, 157 So. 2d 70 (Fla. 1963)).

Cross Reference – subsection 12B-4.053(5), F.A.C.

(11) Revolving Charge Account – No “Promise to Pay” Contained in Sales Slip: Retailer’s Flexible charge account application agreement which is dependent upon the happening of a contingency before any obligation is created, that is, the purchase of goods and the signing of a sales slip which is a mere acknowledgment of delivery of goods and does not in itself contain any promise to pay is not subject to tax. (*Maas Brothers, Inc. v. Dickinson*, 195 So. 2d 193 (Fla. 1967)).

Cross Reference – subsection 12B-4.053(20), F.A.C.

(12) Cashier’s Check: A cashier’s check is a check, draft, or other order for the payment of money drawn by the cashier of a bank upon either his own or some other bank, in which funds of his bank are deposited, and is not a written obligation for the

payment of money as contemplated by the provisions and requirements of the Documentary Stamp Tax Act. Therefore, no tax is required on cashier's checks. (1931 Op. Att'y. Gen. Fla. 1931-32 Biennial Report, Page 831 (Sept. 24, 1931); 1931 Op. Att'y. Gen. Fla. 1931-32 Biennial Report, Page 845 (Oct. 15, 1931)).

(13) Documents Delivered in Another State – “Promise to Pay”: Where a company sells merchandise under agreement or contract outside the State of Florida, and the merchandise is delivered outside the State. Subsequently the purchaser moves to Florida, and the unpaid balance due on such contract or agreement is forwarded to one of the company's stores in Florida. Such contracts are not Florida transactions even after the agreement is forwarded to one of the Florida stores for collection. Therefore, the documentary stamp is not required upon the balance due at the time the contracts are brought into Florida. (1944 Op. Att'y. Gen. Fla. 044-174 (June 12, 1944)).

(14) Conditional Sales Contracts – Executed Outside Florida and Assigned to Florida Finance Company: Conditional sales agreements, evidencing the sale of motor vehicles, from a customer to a motor vehicle dealer in Georgia, discounted and assigned to a finance company doing business in Florida, are not subject to documentary stamp taxes under Florida Statutes, when such agreements are entirely entered into and executed in Georgia, and the finance company enters into the matter after the conditional sales contract is binding. (1962 Op. Att'y. Gen. Fla. 062-11 (Jan. 18, 1962)).

(15) C. O. D. Order – Order and Purchase Contract From Out of State Vendor: Where a person doing business in the state sends an ordinary purchase order for the purchase of merchandise to a non-resident doing business in another state, which order is accepted in another state and the merchandise shipped interstate, such ordinary purchase order, when it contains no express promise to pay for the merchandise ordered and the same is shipped on open account or cash on delivery is not taxable. (1946 Op. Att'y. Gen. Fla. 046-357 (Aug. 10, 1946)).

(16) Document Executed Outside the State to Florida Payee – Payable Outside This State: A promissory note made in another state, by a foreign corporation to a payee of this state, payable at a bank in another state is not taxable. (1960 Op. Att'y. Gen. Fla. 060-82 (April 21, 1960)).

(17) Contract Brought into State for Collection: Contracts for the purchase and sale of real property located in this state, made, executed and delivered in other states, and sent into this state for purposes of collection only are not subject to tax. (1960 Op. Att'y. Gen. Fla. 060-209 (Dec. 30, 1960)).

(18) Surety Bonds: Surety bonds which are to insure the doing of certain things required by the conditions of such bonds and which contain a promise to pay a sum only in the event of the happening of the named contingency are not taxable. (1944 Op. Att'y. Gen. Fla. 044-356 (Dec. 6, 1944)).

(19) Travel Checks: A travel check is issued by the bank and thereupon becomes an order for the payment of money by the bank when properly countersigned, much in the character of a cashier's check and is therefore not taxable. (1931 Op. Att'y. Gen. Fla. 1931-32 Biennial Report, Page 893 (Dec. 22, 1931)).

(20) Banker's or Trade Acceptances: Banker's or trade acceptances, when payable on a date subsequent to acceptance, are written obligations for the payment of money from the date of such acceptance and are taxable. The maximum tax due on a banker's or trade acceptance is \$2450. However, when payable on demand or presentation, and presentation is made after acceptance, they are not written obligations to pay money and are not taxable. (1961 Op. Att'y. Gen. Fla. 066-18 (Mar. 11, 1966)).

Cross Reference – subsection (16) of Rule 12B-4.053, F.A.C.

(21) Pawn Tickets: Transactions between pawnbrokers and their customers concerning pawns made between them are not “written obligations to pay money” within the purview of Section 201.08, F.S., unless the pawn ticket or a copy thereof contains a written promise to pay money, or is otherwise specifically within some section of Chapter 201, F.S. Whether a pawn ticket is a written promise to pay money must be determined from the face of that document. (1961 Op. Att'y. Gen. Fla. 061-12 (Jan. 25, 1961)).

(22) Military Bases – Written Obligation to Pay Money: Written obligations to pay money executed on military bases are not taxable. However, any recorded documents evidencing such indebtedness will require tax. (1963 Op. Att'y. Gen. Fla. 063-136 (Nov. 13, 1963)).

(23) Credit Unions – Written Obligations to Pay Money: Written obligations to pay money executed by state or federal chartered credit unions are exempt. (1957 Op. Att'y. Gen. Fla. 057-21 (Jan. 21, 1957)).

Cross Reference – subsection 12B-4.053(10), F.A.C.

(24) 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.

Cross Reference – subsection 12B-4.002(2) and paragraph 12B-4.002(3)(b), F.A.C.

(25) Student Loans: Documentary stamp tax is not required on promissory notes executed by students who are receiving financial aid from federal or state assistance programs, or any financial aid program administered by a state university or community college, or loans guaranteed by the Federal Government or the state when federal regulations prohibit the assessment of such taxes against the borrower.

Cross Reference – subsection 12B-4.053(29), F.A.C.

(26) Industrial Development Authorities and Florida Housing Finance Corporation: Lease purchase agreements, agreements for sale, agreements or contracts for deeds, notes and mortgages securing a promise to pay money to an industrial development authority or the Florida Housing Finance Corporation by a private entity in connection with the issuance of bonds under Chapter 159 and 420, F.S., are exempt from tax under Chapter 201.08, F.S.

Cross Reference – subsection 12B-4.013(17), F.A.C.

(27) Foreign Notes:

(a) Notes and other written obligations to pay money are exempt from stamp tax if the makers or obligors are individuals residing outside the United States or business organizations or other persons located outside the United States, at the time of making or execution of the note or written obligation. This exemption does not apply to the following:

1. Mortgages, trust deeds, security agreements, or other evidences of indebtedness relating to the purchase or transfer of real property located in Florida and filed or recorded in this state.

2. If the purpose of the financing is to finance all or part of the purchase of personal property for use in Florida, unless such personal property is identifiable as being directly and solely in connection with the production, preparation, storage or transportation of tangible personal property for export or import, and the lender is a banking organization defined in Section 199.023(9), F.S.

3. If at the date of the instrument, the individual obligor resides within the United States; or, if a majority of the equity securities of the maker of the document are owned by individuals residing within the United States or business organizations located within the United States.

(b) The lender shall be entitled to rely upon the written certificate of each maker or obligor certifying as to the purpose of the financing and residency of the maker or obligor; or, if a corporate borrower, that a majority of its equity securities are not owned by individuals residing within the United States or business organizations or other persons located within the United States.

Cross Reference – subsection 12B-4.053(30), F.A.C.

(28) International Banking Transactions:

(a) Documentary stamp tax is not required on notes and evidences of indebtedness, including but not limited to financing statements, drafts and bills of exchange, that are made, issued, drawn upon, accepted, delivered, shipped, received, signed, executed, assigned, transferred or sold by or to a banking organization as defined in Section 199.023(9), F.S., in the conduct of an international banking transaction, as defined in Section 199.023(11), F.S. The exemption does not apply if the financing is for the purchase or transfer of real property located in Florida, or secured by a mortgage, deed of trust or other lien upon real property located in Florida.

(b) For the purposes of the exemption in Section 201.23(4), F.S., the following words and phrases shall have the meaning ascribed to them below:

1. “Banking organization” – means any one of the following:

a. A bank organized and existing under Florida law;

b. A national bank organized and existing as a national banking association under the National Banking Act, Title 12, U.S.C., Section 21, which also maintains its principal office in Florida;

c. An Edge Act corporation organized under the Federal Reserve Act, Title 12, U.S.C., Section 25(a), which maintains a Florida office;

d. An international banking agency licensed under Florida law;

e. A federal agency, licensed under Sections 4 and 5 of the International Banking Act of 1978 to maintain an office in Florida.

2. “International banking transaction” – means financing of any of the following:

a. Tangible personal property or services for export or import into the United States or between jurisdictions abroad;

b. Production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from or import into the United States or jurisdictions abroad;

c. Contracts, projects, or activities to be performed substantially abroad, except transactions secured by mortgage, deed or trust, or other lien on Florida real property.

3. “Abroad” – means in a foreign nation; in a colony, dependency, possession or territory of a foreign nation or of the United States; or in the Commonwealth of Puerto Rico.

4. “Performed substantially abroad” – means completion of the principal terms, conditions, or requirements of a contract, project, or activity abroad, notwithstanding performance of a nominal portion of the contract, project, or activity in Florida or the United States. The relative values of the operations, activities, or services performed, and the percentage of work completed, in various jurisdictions shall be considered in determining whether a contract, project, or activity is performed substantially abroad.

(c) Any financing that is only partially identifiable as being in connection with the production, preparation, storage or transportation of tangible personal property or services for export from or import into the United States shall not qualify for the exemption.

(d) The lender shall prepare a statement to be placed with each loan that documentation qualifying the transaction for the exemption provided by this chapter was submitted to the lender and is in the file.

Cross Reference – subsection 12B-4.053(31), F.A.C.

(29) Financing Statements. – Chapter 679, Uniform Commercial Code: The filing or recording in Florida of a UCC Financing Statement is not taxable under Section 201.08(1), F.S., unless the note, security agreement or other obligatory document is also filed or recorded. However, a notation relative to stamp tax is required on the UCC Financing Statement whether tax is due or not. The notation shall state that proper stamp taxes under Chapter 201, F.S., have been placed on the promissory instruments and will be placed on any additional promissory instrument, or that tax is not required.

Cross Reference – subsection 12B-4.053(32), F.A.C.

(30) Confirmed Bankruptcy Plan: A promissory note or other written obligation to pay money, bond, mortgage, trust deed, security agreement or other evidence of indebtedness filed or recorded in Florida issued pursuant to a Chapter 11 plan which was confirmed under Section 1129 of the Bankruptcy Code (Title 11 U.S.C.), prior to the date of the issuance is not taxable. (11 U.S.C. Section 1146(a); Florida Department of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33 (2008)).

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