SUMMARY

QUESTION: Is a deed from a qualified exchange accommodator to a Taxpayer in a reverse Section 1031 exchange transaction subject to documentary stamp tax, or exempt by reason of the principal agent exemption contained in Rule 12B-4.014(5), F.A.C.? Will the inclusion of a statement in the Real Estate Acquisition Agreement specifying that the qualified exchange accommodator is acting as an agent of the Taxpayer for all purposes except for federal income tax purposes exempt the transaction per the principal agent relationship?

ANSWER - Based on Facts Below: The IRS has ruled that as part of a Section 1031 exchange, there cannot be an agency relationship between the parties to the transaction. However, the IRS has ruled that treating an exchange accommodation titleholder as an agent for state tax transfer purposes, but no other purpose, will not effect the qualification of a transaction under Section 1031. Therefore, the inclusion of a statement in the Real Estate Acquisition Agreement that the qualified exchange accommodator is acting as the Taxpayer's agent will exempt the transaction under the principal agent exemption. However, if such statement were not included, the Department would take the same position as the IRS that there is no principal agent exemption.

October 3, 2005

Re: Technical Assistance Advisement No. 05B4-006
Documentary Stamp Taxes - Deed Involving 1031 Exchange
Section 201.02(1), F.S.
XXX ("Taxpayer")
XXX ("Manager")
XXX ("Exchange Accommodation Title Holder/EAT")
XXX ("Holdings")

Dear:

This is in response to the request for a Technical Assistance Advisement postmarked April 4, 2005. Taxpayer requests confirmation that no Florida documentary stamp taxes are applicable to a deed from a Section 1031 EAT to Taxpayer.

Facts Presented by the Petitioner

Taxpayer's correspondence explains that Taxpayer has been in the process of relocating its corporate headquarters from its present location to a new location to be constructed in a Florida county ("New Location"). Taxpayer's overall plan had been to sell the present location and use the proceeds therefrom to purchase the land for the New Location and to construct the required improvements thereupon. Taxpayer intended for these transactions to qualify as a tax-free exchange under Section 1031, I.R.C., 1986, as amended. Taxpayer decided the most effective way to accomplish the foregoing was to do an exchange under Section 1031 by having Exchange Accommodation

Title Holder (EAT) first acquire the land necessary for the New Location and then have the EAT construct the desired improvements. The EAT acquired the necessary land in 2003 and began construction of the desired improvements shortly thereafter. It is anticipated the improvements would be complete in April of 2005. Appropriate documentary stamp taxes were paid upon the land's acquisition in 2003 by EAT.

Taxpayer has recently sold a portion of its Present Location to an unrelated third party, and it is anticipated that two additional sales of portions remaining to be sold of the Present Location will occur in the next six months. The proceeds from the initial sale were placed in escrow with a bank affiliate, and the proceeds from these two planned sales will also be placed into a similar escrow arrangement.

The EAT, (a wholly owned subsidiary of Holdings), agreed to acquire the land and construct the improvements. Taxpayer provided some of the funding for the acquisition of the land and the improvements via a loan, and the remaining funding was obtained by the EAT under a bank loan guaranteed by Taxpayer. Most of the development and supervision activities have been delegated by the EAT under a Management Services Agreement to a third party services provider; however, Taxpayer retained rights for approval/disapproval any material development/construction actions, and also retains a right to lease the New Location from the EAT if has not yet completed the sale of the Old Location and obtained the sales proceeds therefrom required to close out this Section 1031 arrangement. Taxpayer owns an option to purchase the land and the improvements from the EAT for cost plus a small profit element, which will inure to the benefit of Holdings. If the option at cost plus is not exercised by a date prescribed, the option can only be exercised by paying to the EAT the fair market value of the land and improvements owned by the EAT. These economics have been patterned after IRS Private Letter Ruling PLR 200111025 which approved a similar arrangement.

A copy of the Real Estate Acquisition Agreement, as amended, and the PLR previously cited, were attached to for review.

Article III.B.2 of the Real Estate Acquisition Agreement states that:

"Nothing herein contained shall be construed or is intended to make Taxpayer, on the one hand, and Holdings and [EAT], on the other hand, agents, partners or joint venturers of or with one another. This agreement (a) is not intended to be a partnership agreement and does not create or result in a partnership, (b) does not render [Taxpayer] or [Holdings] liable for any of the debts of obligations of the other and (c) does not create an agency relationship between any of the parties hereto."

Requested Ruling

Taxpayer requests a ruling that no Florida documentary stamp tax is due on the recording of the deed(s) of the New Location from the EAT to Taxpayer in exchange for the payment of the option price stated in the Real Estate Acquisition Agreement for the reasons cited in the following paragraphs.

Your letter cites TAA 01B4-001, issued January 2, 2001, which held that a deed from an exchange accommodation titleholder in a reverse Section 1031 transaction was not subject to documentary stamp tax, as it held that the

exchange accommodation titleholder was acting as an agent for the benefit of the taxpayer to acquire the replacement property, and hence, no documentary stamp taxes were due by reason of the principal-agent exemption. The facts of this ruling indicate the taxpayer loaned funds to the exchange accommodation titleholder to acquire the replacement property, and no facts existed in the TAA providing that the exchange accommodation titleholder was explicitly acting as agent for the taxpayers. Finally, the documents between the taxpayer and the exchange accommodation titleholder gave the taxpayer the ability to acquire the property from the exchange accommodation titleholder. In comparing the current situation described in your request with the referenced TAA, you feel that the situation is the same, i.e., Taxpayer also loaned funds to the EAT to purchase the land and build the improvements. Taxpayer can acquire the property from the EAT, and neither the EAT nor Holdings have any other activities other than facilitating this Section 1031 transaction. Consequently, you feel that a favorable TAA should be issued exempting the Section 1031 transaction under the agent - principal relationship exception.

As an aside, you noted the IRS has ruled that treating an exchange accommodation titleholder as an agent for state transfer tax purposes, but no other purpose, will not effect qualification of a transaction under Section 1031. (PLR 200148042, issued August 29, 2001).

To the extent it would make a difference in the decision rendered, Taxpayer and the EAT would propose to amend the Real Estate Acquisition Agreement to provide that solely for Florida Documentary Stamp tax purposes, the EAT is serving as an agent of Taxpayer.

Law and Discussion

Section 201.02(1), F.S., imposes the documentary stamp tax on deeds, instruments, or writings conveying, granting, or transferring real property or an interest in real property.

Rule 12B-4.014(5), F.A.C., states that a deed from an agent to his principal conveying real estate purchased with the funds of the principal is not taxable.

Based on the facts and circumstances in the referenced TAA, the outcome demonstrated an agency/principal relationship. The Accommodator agreed to hold the Florida property for the benefit of the Exchangor under the terms of a Qualified Exchange Accommodation Agreement and related documents which collectively provided that the Accommodator must convey the Florida property to the Exchangor upon request.

As noted in PLR 200148402 issued by the Internal Revenue Service on November 30, 2001, in order to obtain the benefits of the safe harbor rules contained in the deferred exchange IRS regulations, the transaction need only fit within the confines of the safe harbor rules. Notwithstanding inconsistent treatment or characterization under state or local law, assuming the boundaries of the safe harbor rules are not exceeded, the Taxpayer is afforded protection by the safe harbor rules. Thus, a statement in the Real Estate Acquisition Agreement that the EAT is serving as an agent for the Taxpayer solely for Florida documentary stamp tax purposes will not affect the qualification of the EAT agreement for 1031 exchange purposes.

Department's Position

The inclusion of a statement in the Real Estate Acquisition Agreement that the EAT is acting as an agent of the Taxpayer for all purposes except for federal income tax purposes will serve to exempt the transaction under the agency/principal relationship in Rule 12B-4.014(5), F.A.C., without having an adverse affect on the qualification of the transaction for federal income tax purposes. The Department would take the same view as the IRS if such statement were not included, i.e., that there is no agent/principal relationship.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Joy. B. Eldred, CPA
Tax Law Specialist
Technical Assistance and Dispute Resolution

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