

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ABRAHAM SAADA and REGINA SAADA, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 96-1556  
 )  
 DEPARTMENT OF REVENUE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice, a hearing was held in this case via telephone on December 19, 1997, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, on the Respondent's Motion for Recommended Summary Final Order.

APPEARANCES

For Respondent: Charles Catanzaro  
Assistant Attorney General  
Office of the Attorney General  
The Capitol - Tax Section  
Tallahassee, Florida 32399-1050

For Petitioner: Joseph R. Giaramita, Esquire  
2016 Harrison Street  
Hollywood, Florida 33020

STATEMENT OF THE ISSUES

Whether the petitioners are entitled to a refund of the documentary stamp taxes paid on a Special Warranty Deed conveying real property from the Federal Home Loan Mortgage Corporation to one of the petitioners.

PRELIMINARY STATEMENT

On December 16, 1994, the Federal Home Loan Mortgage Corporation ("Freddie Mac") filed an Application for Refund from the State of Florida Department of Revenue ("Department"), requesting that the Department refund \$9,600.00 which it claimed to have inadvertently paid as documentary stamp tax on a deed from Freddie Mac to a "non-exempt party." In a letter dated August 1, 1995, the Department notified Freddie Mac that it proposed to deny the refund request, identified as claim number 95-72099, and that the denial would become final on October 2, 1995.

A protest letter dated November 29, 1995, was submitted to the Department, and in a Notice of Decision of Refund Denial issued January 24, 1996, the Department notified Joseph R. Giaramita of its decision to sustain the refund denial. On March 25, 1996, Mr. Giaramita timely filed with the Department a Petition for Chapter 120 Administrative Hearing to Contest Denial of Stamp Tax Refund; the petition was filed on behalf of Abraham and Regina Saada. In the Petition, the Saadas alleged that their substantial interests would be affected by the Department's decision to deny Freddie Mac's application for a documentary stamp tax refund because "they overpaid \$9,600.00 in documentary stamp taxes on a deed from an instrumentality of the Federal Government to a non-exempt party."

The Department forwarded the petition to the Division of Administrative Hearings for the assignment of an administrative law judge. At the request of the parties, this case has been in abeyance while the parties pursued discovery and settlement negotiations, and the formal hearing has never been scheduled.

On August 30, 1996, the Department filed a Motion for Recommended Summary Final Order and Supporting Memorandum of Law. A response in opposition to the motion was filed by the petitioners on November 21, 1996, and a Memorandum of Law Supplementing its Motion for Summary Judgment was filed by the Department on December 4, 1996. Upon notice, a telephone hearing was held on the motion on December 19, 1996.

#### FINDINGS OF FACT

Based on the facts alleged in the petition for administrative hearing, the responses to requests for admission, and the facts stipulated to at the hearing on the motion for recommended summary final order, the following findings of fact are made:

1. On September 27, 1994, Freddie Mac conveyed to Abe Saada by a Special Warranty Deed real property located in Dade County, Florida. Regina Saada is not a party to the Special Warranty Deed.

2. The U.S. Department of Housing and Urban Development Settlement Statement prepared for the closing on the property showed that \$9,600.00 in "state tax/stamps" was owed on the deed,

of which \$4,800.00 was to be paid from the funds of the seller, Freddie Mac, and \$4,800.00 was to be paid from the funds of the borrower, Abe Saada.

3. Pursuant to its agreement with Mr. Saada, Freddie Mac paid \$9,600.00 to the Clerk of Court as the documentary stamp tax on the deed on or about September 28, 1994. The deed was recorded in the Dade County Official Records at Book 16525 at pages 3583-3585.

4. Abraham Saada is not exempt from the documentary stamp tax.

#### CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to section 120.569 and .57(1), Florida Statutes (Supp. 1996).

6. Section 201.01, Florida Statutes, imposes liability for the payment of state excise tax as follows:

There shall be levied, collected, and paid the taxes specified in this chapter, for and in respect to the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things described in the following sections, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, is written or printed by any person who makes, signs, executes, issues, sells, removes, consigns, assigns, records, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, recorded, or

shipped in the state. 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 required under this chapter shall be affixed to and placed on all recordable instruments requiring documentary stamps according to law, prior to recordation. With respect to mortgages or trust deeds which do not incorporate the certificate of indebtedness, a notation shall be made on the note or certificate that the tax has been paid and that the proper stamps have been affixed to the mortgage or trust deed.

7. The exemptions stated in section 201.24, Florida Statutes, are not applicable to the parties to this transaction.

8. Section 201.02, Florida Statutes, imposes the documentary stamp tax on deeds and other instruments relating to real property.

9. Rule chapter 12B-4, Florida Administrative Code, contains the Department's rules for administration of the documentary stamp tax. Rule 12B-4.014(9) provides that "[t]he United States or its agencies are exempt from payment of the tax and unless the instrument is exempted by any state or federal law, the required tax is the responsibility of the non-exempt party."

10. Even though Freddie Mac is not a governmental entity or an agency or instrumentality of the United States, American Bankers Mortgage Corp. v. Federal Home Loan Mortgage Corp., 75 F.3d 1401 (9<sup>th</sup> Cir. 1996); Liberty Mortgage Banking Ltd. v.

Federal Home Mortgage Corp., 822 F.Supp. 956, 958 (E.D.N.Y. 1993), it is exempt from state taxation pursuant to Title 12, section 1452(d), United States Code.<sup>1</sup>

11. There is no exemption provided by Congress for a Special Warranty Deed issued by Freddie Mac, and, therefore, the deed is a taxable instrument under Florida law.

12. Rule 12B-4.002, Florida Administrative Code, provides in pertinent part:

(1)(a) Liability in general -- Except as otherwise provided in paragraph (2) and (3) of this Rule, the [documentary stamp] 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.

13. The exemptions stated in rule 12B4.014(2) and (3) are not applicable to the parties to this transaction.

14. Even though Freddie Mac agreed to pay one-half of the \$9,600.00 documentary stamp tax due to be affixed to the Special Warranty Deed prior to its being recorded in the Dade County Official Records, as the non-exempt party to the transaction, Mr. Saada was responsible for paying the entire amount of the documentary stamp tax due on the deed. See Cohen-Ager, Inc., v. Department of Revenue and Metropolitan Dade County, 8 FALR 4912 (Dep't of Rev. 1986)(if document is taxed pursuant to chapter 201, Florida Statutes, documentary stamps are required even if

one party is tax exempt, and the tax must be paid by the non-exempt party).

15. Because Mr. Saada is liable for the documentary stamp tax on the Special Warranty Deed, he is not entitled to a refund of any part of the \$9,600.00 documentary stamp tax at issue in this case.<sup>2</sup>

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Revenue enter a Final Order dismissing the Petition for Chapter 120 Administrative Hearing to Contest Denial of Stamp Tax Refund filed by Abraham Saada and Regina Saada.

DONE AND ENTERED this 8th day of May, 1997, in Tallahassee, Leon County, Florida.

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PATRICIA HART MALONO  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(904) 488-9675 SUNCOM 278-9675  
Fax Filing (904) 921-6847

Filed with the Clerk of the  
Division of Administrative Hearings  
this 8th day of May, 1997.

#### ENDNOTES

<sup>1</sup> That section provides:

The Corporation, including its franchise, activities, capital, reserves, surplus, and income, shall be exempt from all taxation now or hereafter imposed by any

territory, dependency, or possession of the United States or by any State, county, municipality, or local taxing authority, except that any real property of the 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.

<sup>2</sup> Given this conclusion, it is not necessary to reach the issue of whether Abraham and Regina Saada have standing to protest the denial of the refund request submitted by Freddie Mac.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.

<sup>1</sup> That section provides:

The Corporation, including its franchise, activities, capital, reserves, surplus, and income, shall be exempt from all taxation now or hereafter imposed by any



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<sup>2</sup> Given this conclusion, it is not necessary to reach the issue of whether Abraham and Regina Saada have standing to protest the denial of the refund request submitted by Freddie Mac.