

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JORGE RAMOS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-2802
	)	
DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 9, 2012, by video teleconference, with Jorge Ramos appearing in Miami, Florida, and the Department of Revenue appearing in Tallahassee, Florida, before June C. McKinney, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Juan C. Zorrilla, Esquire  
Zorrilla and Associates, P.L.  
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Coral Gables, Florida 33134

For Respondent: Timothy E. Dennis, Esquire  
Assistant Attorney General  
Office of the Attorney General  
The Capital, Plaza Level 01  
Revenue Litigation Bureau  
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether the Petitioner is liable for documentary stamp taxes and interest to the Respondent totaling \$80,405.54, plus additional interest accruing from the date of the assessment, as reflected in the Notice of Proposed Assessment dated January 24, 2011.

PRELIMINARY STATEMENT

The Department of Revenue ("Respondent" or "Department") issued Jorge Ramos ("Petitioner" or "Ramos") a Notice of Proposed Assessment dated January 24, 2011, assessing him for unpaid documentary stamp taxes of \$61,983.00, plus interest for the period of October 23, 2007, to January 24, 2011, or \$18,422.54, for a total of \$80,405.54. Petitioner denied liability and requested an administrative hearing.

The case was referred to the Division of Administrative Hearings on June 3, 2011. The presiding Administrative Law Judge set the final hearing for August 19, 2011, at 9:00 a.m. After several continuances, the final hearing was held by video teleconference on March 9, 2012, in Tallahassee and Miami, Florida.

At the final hearing,<sup>1/</sup> Petitioner testified on his own behalf and presented the testimony of David Coven. Petitioner also offered Exhibits numbered 1 through 16 that were admitted into evidence. Respondent presented two witnesses: Christopher

Maxwell, Auditor III; and Charles Phillips, Revenue Program Administrator I. Respondent also offered Exhibits 1 through 11 that were admitted into evidence.

The proceeding was recorded and transcribed. The Transcript was filed on March 27, 2012. Both parties filed timely Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

#### FINDING OF FACTS

Based on the agreed to issues of fact, oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. Soleil Lake Condominium, LLC ("Soleil") is a Florida limited liability company that formed in 2005.
2. Upon formation, Soleil was composed of two managing members. Ramos was a managing member of Soleil with 50 percent interest in Soleil's assets, and Abelardo Rivera ("Rivera"), Ramos' partner in Soleil, owned the other 50 percent membership interest.
3. On or about September 9, 2005, Soleil purchased an apartment building in Miami-Dade County, which it converted to 240 condominium units.
4. The property was transferred to Soleil by warranty deed.<sup>2/</sup> Documentary stamp taxes in the amount of \$154,500.00 were

paid on the warranty deed when it was recorded with the Miami-Dade Clerk of Courts.

5. Contemporaneously with the transfer of the land, Soleil also executed a mortgage on the property and secured a loan with FirstBank Puerto Rico ("FirstBank") for \$25,637,822.00. The date final payment matured for the loan was September 8, 2007.<sup>3/</sup>

6. By 2007, Soleil had sold 110 of the condominium units.

7. The real estate condominium market slowed down and 130 condominiums units remained unsold. Eventually, unit sales came to a halt.

8. Ramos and Rivera decided that the condominium sales market was no longer viable and that it was in the company's best interest to terminate the sales efforts, distribute the remaining units equally between them, and then dissolve Soleil.

9. Soleil called a special meeting<sup>4/</sup> and determined that each member would be responsible for the payment of 50 percent of the outstanding loan amount to FirstBank. Ramos and Rivera agreed that each partner would enter into loan agreements before the distribution of the remaining units to give them the cash needed to pay off their respective obligations regarding the remainder of Soleil's \$25,637,822.00 preexisting mortgage.

10. Ramos' share of the preexisting loan was \$4,000,000.00, for which he was personally liable.

11. On October 17, 2007, Ramos executed a First Mortgage Deed<sup>5/</sup> over the 65 condominium units in favor of HBAR Realty LLC<sup>6/</sup> conveying a "Collateral Mortgage Interest" to secure a \$4,000.000.00 promissory note. The HUD closing document indicated a disbursement date for the monies of October 17, 2007, to Jorge Ramos, a married man.<sup>7</sup>

12. On October 18, 2007, Ramos and Rivera executed a "Certificate of Incumbancy and Resolution of the Members of Soleil Lake Condominium, LLC," authorizing the conveyance of 65 of the 130 condominium units to Ramos "as a distribution."<sup>8/</sup>

13. On October 18, 2007, Soleil contemporaneously executed a Warranty Deed<sup>9/</sup> to Ramos transferring his 50 percent interest, the 65 condominium units.

14. The Warranty Deed specifically disclaims documentary stamp tax liability on its face, stating:

**WHEREAS NO NEW CONSIDERATION IS BEING GIVEN FOR THIS DEED AND THIS DOCUMENT IS THEREFORE EXEMPT FROM DOCUMENTARY TAX PURSUANT TO F.S. Chapter 201, as this instrument is solely a distribution to a Member of his share of company assets and no additional stamps are due.**

15. On October 23, 2007, the First Mortgage Deed, Certificate of Incumbancy, and Warranty Deed were recorded in the Miami-Dade County Public Records. Only minimal documentary stamp taxes (60 cents) were paid on the Warranty Deed.

16. On or about January 25, 2008, Soleil filed Articles of Dissolution for a Limited Liability Company ("Articles").<sup>10/</sup> The Articles state: "All debts, obligations and liabilities of the limited liability company have been paid or discharged."

17. On February 6, 2008, FirstBank executed a Satisfaction of the Mortgage, releasing the September 2005 mortgage on the property held by Soleil.

18. In 2010, the Department initiated an audit of the Ramos October 17, 2007, Warranty Deed. Chris Maxwell ("Maxwell" or "auditor") was assigned to perform the audit.

19. To ascertain Petitioner's documentary tax liability for the Warranty Deed, Maxwell evaluated public records because Ramos never provided the information to Maxwell for the audit as he had agreed during the only successful contact Maxwell had with Petitioner.

20. Maxwell chose the mortgage value \$4,000,000.00 as a basis for his audit because the mortgage was recorded one day before the Warranty Deed was executed. Therefore, Maxwell determined that Ramos took title to the 65 units subject to the \$4,000,000.00 HBAR Mortgage and concluded it was the encumbrance at the time of transfer.

21. During his audit, Maxwell determined the beneficial interest amount for his calculations by using as a base the 2009 assessed valued amount for the 65 condominium units obtained from

the Miami-Dade Property Appraisers Office, because he did not receive any information from Ramos regarding the transaction.

22. Maxwell started his calculation with the 2009 values, by taking the condominium units and assigning value according to the Property Appraiser's valuation. Maxwell then adjusted the amount downward by three percent<sup>11/</sup> to arrive at an estimation of the parcels' value in 2008, and the 2008 amount was then adjusted downward by another three percent to arrive at an estimation of the 2007 fair market value of \$7,806,334.00.

23. Maxwell next took the mortgage amount of four million dollars and subtracted it from the 2007 fair market value, leaving a balance of \$3,806,334.00 and divided that amount by two since Ramos had obtained only one-half of the condos, which came to an equity determination of \$1,903,167.00.

24. Next, Maxwell valued the taxable consideration by adding the assumed value of the mortgage \$4,000,000.00 and the estimated value of the equity or beneficial interest transferred of \$1,903,167.00 for a total of \$5,903,167.00.

25. Maxwell then used the Miami-Dade surtax for deeds of 45 cents per \$100 for a total of \$26,564.40.00.

26. On or about December 20, 2010, the Department issued a "Notice of Intent to Make Audit Changes" ("Notice of Intent") to Ramos with its determination and basis for determination that \$61,983.00 in documentary stamp taxes plus interest was due.

27. On or about January 24, 2011, the Department issued its "Notice of Proposed Assessment", reasserting the original tax that was noticed from the Notice of Intent and calculating an additional interest in the amount of \$18,422.54.

#### CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 72.011, 120.569, and 120.57(1), Florida Statutes.

#### The Parties' Burden of Proof

29. Section 120.80(14)(b)2. provides that, in an administrative proceeding initiated pursuant to section 72.011(1), Florida Statutes, "the applicable department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and legal grounds upon which the applicable department made the assessment."

30. Once the Department has satisfied its burden of establishing the factual and legal basis for its assessment, the burden shifts to the taxpayer to prove by a preponderance of the evidence that the assessment is incorrect. See Dep't of Rev. v. Nu-Life Health and Fitness Center, 623 So. 2d 747, 751-52 (Fla. 1st DCA 1993); § 120.57(1)(j), Fla. Stat.



The Statute of Limitations

31. Section 95.091 provides the statute of limitations applicable in actions to collect taxes and reads in pertinent part:

(3) (a) With the exception of taxes levied under chapter 198 and tax adjustments made pursuant to ss. 220.23 and 624.50921, the Department of Revenue may determine and assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011 which it has authority to administer and the Department of Business and Professional Regulation may determine and assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011 which it has authority to administer:

1.a. For taxes due before July 1, 1999, within 5 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later; and for taxes due on or after July 1, 1999, within 3 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later;

b. Effective July 1, 2002, notwithstanding sub-subparagraph a., within 3 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later;

\* \* \*

(4) If administrative or judicial proceedings for review of the tax assessment or collection are initiated by a taxpayer within the period of limitation prescribed in this section, the running of the period is tolled during the pendency of the proceeding. Administrative proceedings include taxpayer protest proceedings initiated under s. 213.21 and department rules.

32. Section 213.345 further provides the parameters when the statute of limitations can be tolled and reads in pertinent part:

213.345 Tolling of periods during an audit.—  
The limitations in s. 95.091(3) and the period for filing a claim for refund as required by s. 215.26(2) shall be tolled for a period of 1 year if the Department of Revenue has, on or after July 1, 1999, issued a notice of intent to conduct an audit or investigation of the taxpayer's account within the applicable period of time. The department must commence an audit within 120 days after it issues a notice of intent to conduct an audit, unless the taxpayer requests a delay. If the taxpayer does not request a delay and the department does not begin the audit within 120 days after issuing the notice, the tolling period shall terminate unless the taxpayer and the department enter into an agreement to extend the period pursuant to s. 213.23.

33. Petitioner raised the statute of limitations in this proceeding and thus made it an issue in this matter. However, the Department presented credible evidence that the audit was commenced within the three-year statute of limitations and that the assessment was issued within four years of the warranty deed. Therefore, the audit period is proper and the statute of limitations has not expired regarding the time period for the assessment at issue.

## Other Relevant Statutes

34. Documentary stamp tax is an excise tax due on a document. Section 201.01, Florida Statutes(2007), provides that "documentary stamp taxes shall be paid on all recordable instruments requiring documentary stamp tax according to law, prior to recordation."

35. In section 212.02 (2007), the Florida Legislature set the parameters for tax on deeds and other instruments conveying an interest in real property, which reads in pertinent part:

(1) 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 therefore 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 therefore. 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.

36. The Supreme Court held that "the transfer of property between a grantor and its wholly owned grantee absent any exchange of value, is without consideration or a purchaser and thus not subject to the documentary stamp tax in section 201.02(1)." Crescent Miami Ctr., LLC, v Dep't of Revenue, 903 So. 2d 913 (Fla. 2005).

37. As in Crescent, Petitioner did not give anything of value in exchange for the 65 condominium units distributed to him by the Warranty Deed on October 18, 2007. The record demonstrates that Soleil consisted of two managing members, Ramos and Rivera, who each held a 50 percent interest in Soleil's assets. In 2007, when Soleil's unit sales stopped and 130 condominium units remained as the company's assets, Ramos' 50 percent interest was 65 condominium units. Subsequently, when Soleil decided to dissolve the company and distribute the remaining 130 condominium units, Petitioner's ownership remained a 50 percent share in Soleil's assets, 65 condominium units. Hence, the October 18, 2007, Warranty Deed transferring the 65 condominium units to Ramos only changed Petitioner's ownership form.

38. The Department's contention that the Warranty Deed provided an additional 50 percent interest in the 65 condominium units, which Petitioner did not already possess as a half-owner of Soleil, and therefore transferred Ramos a beneficial interest,

which constituted consideration is not persuasive. In this matter, the Warranty Deed transfer is only a change in ownership because there was no consideration or purchaser in the transaction as required by section 201.02. As such, the Warranty Deed is not taxable.

RECOMMENDATION

Based on the foregoing, Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Revenue enter a final order finding that Jorge Ramos does not owe documentary stamp taxes on the October 18, 2007, Warranty Deed and withdrawing the assessment in the amount of \$80,405.54, plus interest at \$11.89 per day from January 25, 2011.

DONE AND ENTERED this 1st day of June, 2012, in Tallahassee, Leon County, Florida.



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JUNE C. MCKINNEY  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of June 2012.

ENDNOTES

1/ Of note, the Department attempted to change its position on the assessment and provide a new assessment the morning of the final hearing without proper notice to Petitioner. The undersigned found the new assessment prejudicial and did not allow the Department to use the new reassessment in this matter.

2/ Respondent's Exhibit 2.

3/ Respondent's Exhibit 1.

4/ Petitioner's Exhibit 1.

5/ Respondent's Exhibit 3.

6/ Ramos claimed that he pledged additional properties including a shopping center and his residence to secure the \$4,000,000 loan from HBAR. His testimony regarding such is not found to be credible based on the First Mortgage Deed specifically excluding his residence and the Settlement Statement for the transaction only listing the 65 condominiums units.

7/ Petitioner's Exhibit 5.

8/ Petitioner's Exhibit 10.

9/ Respondent's Exhibit 7.

10/ Respondent's Exhibit 8.

11/ Maxwell used a three percent base each year because homestead allows properties to increase by three percent a year, so he used the same amount to decrease the amount yearly.

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.