FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: RULE TITLE:
68A-27.003 Designation of Endangered Species; Prohibitions

NOTICE OF CORRECTION

When the above proposed rule was published in the April 29, 2011, Vol. 37, No. 17 FAW, paragraph 68A-27.003(1)(c) should have read:

68A-27.003 Designation of Endangered Species; Prohibitions.

(1) Federally-designated Endangered and Threatened species:

(c) Fish:

~~1. Gulf sturgeon (*Acipenser oxyrinchus [=oxyrhynchus] desotoi*)(T),~~

~~2.~~ Okaloosa darter (Etheostoma okaloosae)(E),

~~3. Shortnose sturgeon (*Acipenser brevirostrum*)(E),~~

~~4. Smalltooth sawfish (*Pristis pectinata*)(E).~~

Section IV
Emergency Rules

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE NO.: RULE TITLE:
12BER11-2 Tax on Transfers of Ownership Interest in Legal Entities

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Chapter 2009-131, Laws of Florida, authorizes the Department to promulgate an emergency rule, and to renew such rule, to implement the provisions of the law. The law provides that conditions necessary for an emergency rule and its renewal have been met. Section 201.02(1)(b), F.S., provides for the imposition of tax on transfers of ownership interest in a conduit entity when the transfer is within three years of a transfer of Florida real property into the conduit entity, documentary stamp tax was not paid on the full consideration when the real property was transferred into the conduit entity, and the ownership interest transferred belonged to the grantor of the real property. This emergency rule provides how the tax is imposed, when the tax is due, and examples of transfers of real property that would be subject to the tax.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized the promulgation of an emergency rule, and the renewal of such rule, to implement Chapter 2009-131, Laws of Florida, and determined that all conditions necessary for this emergency rule have been met. This law imposes a tax on the transfer of a grantor's ownership interest in a conduit entity when the grantor conveyed real property to the conduit entity without having paid tax on the full consideration for the real property and the transfer is within three years after the grantor conveyed the real property to the conduit entity.

SUMMARY: Emergency Rule 12BER11-2, F.A.C. (Tax on Transfers of Ownership Interest in Legal Entities), provides for the application of tax to transfers of a grantor's ownership interest in a conduit entity after the grantor has conveyed real property to the conduit entity without having paid tax on the full consideration for the real property. This emergency rule: (1) provides when the tax is imposed under Section 201.02(1)(b), F.S., as amended by Chapter 2009-131, L.O.F., how the tax is computed, and when the tax is due; (2) provides definitions of the terms "conduit entity" and "full consideration"; and (3) provides examples of transfers of real property that would be subject to the tax.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Tim Phillips, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-7224

THE FULL TEXT OF THE EMERGENCY RULE IS:

12BER11-2 Tax on Transfers of Ownership Interest in Legal Entities.

(1)(a) Scope. This rule applies to transfers of a grantor's ownership interest in a conduit entity after the grantor has conveyed real property to the conduit entity without having paid tax on the full consideration for the real property.

(b) Definitions. For purposes of this rule:

1. "Conduit entity" means a legal entity to which real property is conveyed without full consideration by a grantor who owns a direct or indirect interest in the entity or a successor entity.

2. "Full consideration" means the consideration that would be paid in an arm's length transaction between unrelated parties.

(2) When a grantor conveys real property to a conduit entity without tax being paid on full consideration and all or a portion of the grantor's ownership interest, either direct or indirect, is subsequently transferred for consideration within 3 years after the grantor conveyed the real property to the conduit entity, the transfer of the grantor's ownership interest in the conduit entity is subject to tax.

(3) The tax is based on the consideration paid or given for the grantor's ownership interest in the conduit entity. The tax rate is 70 cents for each $100 or fraction thereof of the consideration. If the conduit entity owns assets other than the real property described in subsection (2), tax is calculated by multiplying the consideration for the interest in the conduit entity by a fraction, the numerator of which is the value of the

real property described in subsection (2) and the denominator of which is the value of all assets owned by the conduit entity, and then multiplying the result by the tax rate.

(4) A gift of an ownership interest in a conduit entity is not subject to tax to the extent there is no consideration.

(5) The transfer of shares or similar equity interests that are dealt in or traded on public, regulated security exchanges is not subject to the tax.

(6) The tax is to be paid pursuant to Section 201.133, F.S., on the earliest of the 20th day of the month following the month the ownership interest is transferred or the date that an instrument evidencing the transfer is filed or recorded in Florida.

(7) The provisions of this rule do not affect the imposition of tax on transactions described in Section 201.02(4), F.S.

(8) Examples.

(a) Example 1: On July 2, 2009, Lloyd transferred Florida real property (the real property), owned by him alone, to a limited liability company (LLC) he owned alone. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 3, 2009, Lloyd transferred his interest in the LLC for $1,000,000. The LLC owned no assets other than the real property. Documentary stamp tax of $7,000.00 was due on the transfer of Lloyd's ownership interest in the LLC based on the $1,000,000 consideration, since Lloyd was the grantor of the real property and since tax was not paid on full consideration when the real property was transferred to the LLC.

(b) Example 2: On July 2, 2009, Calvin and Sally transferred Florida real property (the real property) which they owned jointly, to a limited liability company (LLC) owned equally by Calvin and Sally. The full consideration at the time of the transfer would have been $30,000. Documentary stamp tax of $210 was paid on the document that transferred the real property to the LLC. On July 10, 2009, Calvin and Sally sold their ownership interests in the LLC for $35,000. The only asset owned by the LLC at the time was the real property. No documentary stamp tax was due on the transfer of Calvin and Sally's ownership interests in the LLC, since tax was paid on the full consideration for the real property when it was transferred to the LLC.

(c) Example 3: On July 2, 2009, Vern and Carol transferred Florida real property (the real property) which they owned jointly, to a limited liability company (LLC) owned equally by Vern and Carol. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 10, 2009, Vern sold his interest in the LLC for $200,000. Tax of $1400 was due on the transfer of Vern's ownership interest in the LLC, since Vern was a grantor of the real property and since tax was not paid on full consideration for the real property when it was transferred to the LLC.

(d) Example 4: On July 2, 2009, Pam and Mike transferred Florida real property (the real property) which they owned jointly, to a corporation. The corporation was owned equally by Mike and a limited liability company (LLC) owned by Pam alone. No documentary stamp tax was paid on the document that transferred the real property to the corporation. On July 10, 2009, Pam sold her interest in the LLC (thereby selling her indirect ownership interest in the corporation) for $45,000. The corporation owned property in addition to the real property transferred to it on July 2, 2009. Full consideration for the real property would have been $85,000, and the real property made up 95% of the value of all assets owned by the corporation. The only asset owned by the LLC was its interest in the corporation. Tax of $299.60 was due on the transfer of Pam's ownership interest based on consideration of $42,750 ($45,000.00 multiplied by the 95% attributable to the real property), since Pam was the grantor of the real property and since tax was not paid on full consideration for the real property when it was transferred to the corporation.

(e) Example 5: On July 2, 2009, Tom transferred Florida real property (the real property) owned by him alone, to a limited liability company (LLC) he owned alone. No documentary stamp tax was paid on the document that transferred the real property to the LLC. On July 10, 2009, Tom sold 50% of his interest in the LLC to Imogene for $200,000. Tax of $1,400 was due on the transfer of Tom's ownership interest in the LLC based on consideration of $200,000, since documentary stamp tax was not paid on full consideration for the real property when it was transferred to the LLC. On July 25, 2009, Tom sold one-half of his remaining 50% ownership interest in the LLC for $105,000, and Imogene sold one-half of her 50% ownership interest in the LLC for $105,000. Tax of $735 was due on the transfer of Tom's ownership interest, since Tom was the grantor of the real property and since tax was not paid on the fair market value of the real property when it was transferred to the LLC. No tax was due on Imogene's transfer, since Imogene was not a grantor of the real property.

Rulemaking Authority s. 6, Ch. 2009-131, L.O.F. Law Implemented Ch. 2009-131, L.O.F. History–New 5-3-11.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: May 3, 2011

Section V
Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF COMMUNITY AFFAIRS

NOTICE IS HEREBY GIVEN that on April 22, 2011, the Department of Community Affairs, received a petition for waiver from the City of Clewiston. It has been assigned the number DCA11-WAI-079.