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This Week in State Tax (TWIST)

November 24, 2025

Florida: Appeals court rules refinanced mortgages not subject to new documentary and intangibles taxes; taxpayer due refund

The Florida First District Court of Appeal affirmed a Circuit Court decision holding that a taxpayer was entitled to a refund of stamp and intangibles taxes on certain refinanced home loans and mortgages. Under Florida law, the documentary stamp tax and intangible tax are assessed when there is a promise to pay a sum certain signed by a borrower. For mortgage transactions, tax is paid at the time the mortgage is recorded. Home refinancing loans are exempt from these two taxes to the extent the lender provides no new money to the borrower. Specifically, a new loan must be a renewal of the old loan for the stamp tax exemption to apply, and the new loan must refinance the old loan with the same lender for the intangible tax exemption to apply.

The taxpayer refinanced home loans for many Florida customers, paying both the documentary stamp tax and intangible tax on each loan. If the refinanced amount exceeded the original loan, the taxpayer agreed it owed taxes on the “new money.” However, the Department contended that taxes were due on the full amount of the refinanced loans, including amounts rolled over from the original loans. The taxpayer paid the requested amount and sought refunds for the amounts that did not involve the provision of “new money” on the refinanced loans. The Department audited a sample of 980 loans. It concluded the taxpayer owed taxes on the full amount, treating the refinanced loans as wholly new loans rather than renewals, and denied the refund claim. The taxpayer appealed, and the trial court ruled in favor of the taxpayer, finding most loans qualified as renewals or refinancing. The Department appealed.

On appeal, the Department argued that the new loans were “novations” (i.e., new, unconnected agreements that discharged the original debts). The appellate court rejected the Department’s position and ruled that the obligations under the original loans were not extinguished but were rolled into the new loans, thereby qualifying as renewals. The appellate court explained that even though the taxpayer recorded “satisfactions” of the original home loans once the new loans were finalized, the evidence the taxpayer presented was sufficient to demonstrate that the borrowers’ obligations to pay the balance on their original loans to the taxpayer did not vanish, thus some of the refinanced loans qualified for the stamp tax and intangible tax exemptions.

The Department further argued that the taxpayer failed to meet the statutory requirement to attach the original note with proper notation to the renewal note. The appellate court rejected this argument, explaining that in the mortgage context, tax payment notations are made on the mortgage, not the note, and thus the taxpayer did not violate the attachment requirement. The Department had also waived certain evidentiary challenges by not

raising them earlier. The appellate court affirmed the trial court decision, holding that the taxpayer's refinanced loans qualified for the stamp and intangible tax exemptions to the extent there was no increased indebtedness. For more information on *Department of Revenue v. Bank of America NA*, contact Amanda Ribeiro.