

Bilzin Sumberg

REAL ESTATE TAX UPDATE

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Florida Supreme Court Eases Rules on Real Estate Transfer Taxes

A recent Florida Supreme Court ruling permits transfers between related entities without payment of transfer taxes.

The Florida Supreme Court recently ruled in a case involving Miami Center in downtown Miami that transfers between related entities could be made tax free under certain circumstances. The Court concluded that in the related entity transfers involved: (i) there was no consideration and (ii) there was no substantive transfer, just a change in entity form. The decision resulted in sustaining a refund claim of \$1,212,750. This decision is applicable to many related party transfers, however the benefits of the Court's ruling would result in the most substantial savings when the transferred property is not subject to a mortgage. Under the holding, if real property were subject to a mortgage, the mortgage amount would be subject to documentary stamp tax and surtax, but the excess value of the property above the mortgage would not be subject to tax. The transaction has to be structured in a particular way in order to avoid the payment of transfer taxes commonly known as documentary stamps and surtax.

While somewhat unclear, Bilzin Sumberg attorneys believe the rule articulated by the Supreme Court would be retroactive and cover transfers made in the past, affording a taxpayer with the right facts a potential refund claim. Transfers where the beneficial ownership remains constant, such as from individuals to their corporation, limited liability company or general or limited partnership, or from one of those entities to another type of entity with the same ownership, on which the documentary stamp tax had been paid in connection with such a transfer, may generate a refund claim for all or a portion of the documentary stamp tax and surtax, if any.

The ruling was based on the interpretation of the current statute. It is likely that the Department of Revenue will request the legislature to modify the statute to try to overturn the Supreme Court's ruling and close what the Department perceives as a tax loophole. Anyone who wishes to make such a transfer might consider that there is a window of opportunity to do so tax free in light of the recent Supreme Court ruling.

It would be prudent at this time to review past transfers with related entities and consider whether to file for refunds, as well as to examine current ownership of real properties to determine if transfers should be made to move properties to more appropriate holding entities. Bilzin Sumberg attorneys are available to assist in a discussion of potential refund claims and prospective transfer planning and structuring in this area. For more information, please contact Marty Schwartz at mschwartz@bilzin.com or 305.350.2367 or John Sumberg at jsumberg@bilzin.com or 305.350.2364.