

# BEACHES, SUNSHINE, AND DOCUMENTARY STAMP TAXES... 3 THINGS TO LOVE ABOUT FLORIDA!

Florida is one of the most relaxing places in the United States, with beautiful weather and many beautiful beaches. However, it is not nearly as relaxing for anyone who is filing a UCC-1 financing statement! For those who aren't familiar with filing in Florida, there is a section on the UCC-1 form that looks like this:

**6. Florida DOCUMENTARY STAMP TAX – YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX**

- All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.
- Florida Documentary Stamp Tax is not required.

For many, the natural reaction is:

- What is this?
- I don't know if this tax was paid, how can I tell?
- Can I just check the box to say it is not required, and be done with it?
- If this is something that needs to be paid, how do I go about paying the documentary stamp tax?
- How do I determine how much tax is owed?

These are all great questions! If you are asking these, you are not alone. We cannot even begin to count the times we have been asked these same questions over the past 20 plus years that we've been in the UCC search and filing business. To that end, we created the Do Diligence Top 6 FAQs regarding the Florida Documentary Stamp Tax.



# DO DILIGENCE TOP 6 DOCUMENTARY STAMP TAX FAQs

## **FAQ #1: WHAT IS THE FLORIDA DOCUMENTARY STAMP TAX?**

Documentary stamp tax is an excise tax imposed on certain documents executed, delivered, or recorded in Florida. Promissory notes and other written obligations to pay money, including each renewal of a promissory note and other written obligations to pay money (except those exempt under section 201.09(1), Florida Statutes), that are signed or delivered in Florida are subject to documentary stamp tax.

The most common examples are:

- Documents that transfer an interest in Florida real property, such as deeds
- Mortgages and written obligations to pay money, such as promissory notes

The Documentary Stamp Tax provisions are found in Chapter 201 of the Florida Statutes.

## **FAQ #2: DOES FILING A UCC FINANCING STATEMENT TRIGGER THE OBLIGATION TO PAY THE DOCUMENTARY STAMP TAX?**

No, the obligation to pay the documentary stamp tax is triggered by certain events that are not related to the filing of a financing statement under Article 9 of the UCC. These events are set forth in the section 201.08 of the Florida Statutes.

In order to be taxable under s. 201.08, a written obligation to pay money must have the following three elements within the four corners of the document, or must expressly incorporate other documents such that, when the documents are read together, they contain these elements:

1. A written promise to pay
2. A sum certain in money
3. The signature of the borrower

If these elements exist at the time the agreement is executed and delivered, it is subject to the documentary stamp tax. It is important to keep in mind that all three elements must be present. Rule 12B-4.054(4), Florida Administrative Code (F.A.C.), provides that a written obligation to pay money which is not fixed and absolute at the time of execution is not subject to tax.



### **FAQ #3: DO I PAY THE DOCUMENTARY STAMP TAX AS PART OF THE FILING FEE WHEN I FILE MY UCC-1?**

No. The act of paying the documentary stamp tax and the act of filing the financing statement are two separate things.

Paying the documentary stamp tax is done to generate revenue for the State of Florida, and it is done via making a payment to the Florida Department of Revenue. The purpose of filing a financing statement is to provide notice to other lenders that you have a security interest in the collateral, and it is done via a filing at the Florida Transaction Registry.

To file a UCC-1 or UCC-3 filing in Florida, go to: [www.ddsimplified.com](http://www.ddsimplified.com)

### **FAQ #4: HOW MUCH IS THE DOCUMENTARY STAMP TAX AND HOW DO I GO ABOUT PAYING IT?**

Tax is due on the full amount of the obligation evidenced by the taxable document at the rate of 35 cents per \$100 or portion thereof. However, the tax due on a note or other written obligation to pay money is capped at \$2,450.

#### For example:

Amount Borrowed: \$100,000

Tax Rate: .0035

Amount Due: \$350.00 in documentary stamp taxes are required

To pay the documentary stamp tax, go to:

<https://floridarevenue.com/taxes/eservices/Pages/filepay.aspx>

Please check with the Florida Department of Revenue for updates and additional details.

*201.08 Tax on promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation; exception.*

*(1)(a) On promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, executed, delivered, sold, transferred, or assigned in the state, and for each renewal of the same, the tax shall be 35 cents on each \$100 or fraction thereof of the indebtedness or obligation evidenced thereby. The tax on any document described in this paragraph may not exceed \$2,450.*



## **FAQ #5: I READ SOMEWHERE THAT UCC FILINGS ARE EXEMPTED FROM PAYING THE DOCUMENTARY STAMP TAX. IS THAT TRUE?**

Yes and no. It is true that the filing or recording of a UCC financing statement is not taxable unless the promissory note or security agreement is also filed and recorded at the same time (e.g. as an attachment). That is why many filers do not attach any such documents to their UCC filings in Florida! However, that does not mean the actual financing transaction is exempt from the tax, it only means that the filing of a financing statement is not a taxable event.

That being said, a UCC financing statement is required to have a “notation relative to” the stamp tax, which indicates that the proper taxes have been paid or that the payment of the tax is not required. That is why the Florida UCC form has the field for entering the documentary stamp tax information (See section 12B-4.054(29) of the Florida Administrative Code below).

### *12B-4.054 Exempt Transactions.(29) Financing Statements. – Chapter 679, Uniform Commercial Code*

*The filing or recording in Florida of a UCC Financing Statement is not taxable under Section 201.08(1), F.S., unless the note, security agreement or other obligatory document is also filed or recorded. However, a notation relative to stamp tax is required on the UCC Financing Statement whether tax is due or not. The notation shall state that proper stamp taxes under Chapter 201, F.S., have been placed on the promissory instruments and will be placed on any additional promissory instrument, or that tax is not required.*

## **FAQ #6: WILL THE FILING OFFICE REJECT MY UCC-1 FILING IF I FAIL TO FILL OUT THE FIELD THAT REFERENCES THE DOCUMENTARY STAMP TAX?**

Yes, failing to complete field 6 on the UCC-1 form could result in the rejection of your filing. See section 201.22 below.

Some filers have argued that the relevant statute does not specify that the information must be in field 6, so using another field on the form (e.g. the miscellaneous field) is sufficient. However, for the sake of simplicity and predictability, we recommend always using the designated field on the form.



**201.22 Financing Statements Under Chapter 679 of the Uniform Commercial Code.**

*The excise tax on documents provided by this chapter shall be applicable to transactions covered by the Uniform Commercial Code to the same extent that it would be if the code had not been enacted. The clerk or filing officer shall not accept for filing or filing and recording any financing statement under Chapter 679, unless there appears thereon a notation that the taxes required by this chapter have been paid on the promissory instruments secured by said financing statement and will be paid on any additional promissory instruments, advances, or similar instrument that may be secured by said financing statement.*



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