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October 10th, 1968

#8845 and #8844

Deed Book 853, page 588

Deed Book 853, page 585

FROM: Joseph C. Coleman
Assistant Attorney General

TO: Mr. B. S. Breazeale
Director, License Tax Division

SUBJECT: Documentary Stamp Tax -
Leases of Real Property

You have inquired whether or not a lease of real property is subject to imposition of the State documentary stamp tax:

- (1) If the rental is paid in advance for the entire period covered by the lease.
- (2) If the rental is to be paid, at least in part, in the future.

The Supreme Court of Florida has ruled on both questions in Dur Commission v. Lee, 24 So. 2d 234, (1945). Sitting en banc, the Court held by way of dictum that a lease of real estate must convey some kind of an "interest" in land, taxable under the Florida documentary stamp law; and, on the point at issue in the case, it was held that the covenant in a lease to pay rent constituted a "written obligation to pay money," also taxable under Florida law.

The Court said, 24 So. Rep. 2nd at p. 235:

"We think the phrase 'written obligation to pay money' must comprehend the covenant in a lease to pay rent."

And, again at p. 235:

"Certainly a - - - lease must convey some kind of an 'interest' in land."

The Florida Court later reversed its ruling that the covenant in a lease to pay rental constituted a taxable "obligation to pay money," and affirmed its holding in Dundee that a lease of land, short-term or long-term, was taxable as the transfer of an "interest in land" under Florida law, which imposed a documentary stamp tax: