

# Akerman Practice Update

TAXATION

May 2009

## Documentary Stamp Tax Strategies Shut Down

A limited window of opportunity remains to reduce tax on future real estate transactions.

By Russell B. Hale  
[russ.hale@akerman.com](mailto:russ.hale@akerman.com)

DENVER  
FT. LAUDERDALE  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MIAMI  
NEW YORK  
ORLANDO  
TALLAHASSEE  
TAMPA  
TYSONS CORNER  
WASHINGTON, D.C.  
WEST PALM BEACH

[akerman.com](http://akerman.com)

In 2005, the Florida Supreme Court issued a 7-0 decision in the case, *Crescent Miami Center, LLC v. Florida Department of Revenue*, holding that when unencumbered property is transferred from the owner to a wholly owned legal entity – such as a limited liability company or wholly owned partnership - it is not subject to the Florida documentary stamp tax.

This ruling confirmed the viability of a loop-hole where real property is transferred tax free to a wholly owned entity (or contributed to a trust, followed by a conversion of the trust to an entity) after which ownership interests in the entity are also transferred tax free. The two steps are each exempt or partially exempt and accomplish the goal of transferring the real estate with minimal taxes.

In the recently concluded Florida legislative session, the documentary stamp tax “two step” has been retired, and assuming approval by the Governor, will die July 1. However, a limited window of opportunity remains to reduce tax on future real estate transactions.

In short, if the owners of property transfer the property to an entity that they also own for less than full consideration, the entity is classified as a conduit entity for three years. The sale of an interest in a conduit entity is subject to tax based upon the consideration paid for the interest. If the entity has assets other than real property, there is a pro-ration.

“In the recently concluded Florida legislative session, the documentary stamp tax “two step” has been retired, and assuming approval by the Governor, will die July 1.”

The bad news for property owners is:

- The existing loopholes are closed. The two step will not work under the new law.
- It is not yet clear how the new law will treat corporate distributions or other intercompany transactions. The advisory language limits the Crescent Miami case to its facts, which is the capital contribution scenario only.
- There is a possibility of double tax. Once when encumbered property is contributed to the entity, and again when the interest in the entity is transferred.

However, this change also presents an enormous planning opportunity.

- If you do not plan to subsequently transfer interests in the conduit entity, the legislation confirms the Crescent Miami case.
- The legislation may not plug all loopholes. Planning strategies still exist under the new law.
- The legislation does not apply if the initial transfer of property to the conduit entity occurs prior to July 1, 2009

The last point is the most critical. If property is transferred to the entity before July 1, 2009, all of the existing planning tools remain available even if the entity transfer occurs after July 1, 2009.

Akerman is ranked among the top 100 law firms in the U.S. by *The National Law Journal NLJ 250* (2008) in number of lawyers and is one of the largest law firms in Florida. Our team serves clients in the major international business centers in the United States, including Los Angeles, Miami, New York, and Washington, D.C. Akerman is a member of Lex Mundi, the world's leading association of independent law firms with a presence in more than 100 countries.

For more information, please contact a member of our Taxation practice group.

**Denver**

511 Sixteenth Street, Suite 420  
Denver, CO 80202  
303.260.7712

**Ft. Lauderdale**

Las Olas Centre II  
350 East Las Olas Boulevard  
Suite 1600  
Ft. Lauderdale, FL 33301-2229  
954.463.2700

**Jacksonville**

50 North Laura Street, Suite 2500  
Jacksonville, FL 32202-3646  
904.798.3700

**Los Angeles**

725 South Figueroa Street, 38th Floor  
Los Angeles, CA 90017-5438  
213.688.9500

**Madison**

222 West Washington Avenue, Suite 380  
Madison, WI 53703  
608.257.5335

**Miami**

One Southeast Third Avenue  
25th Floor  
Miami, FL 33131-1714  
305.374.5600

**New York**

335 Madison Avenue, Suite 2600  
New York, NY 10017-4636  
212.880.3800

**Orlando**

CNL Center II at City Commons  
420 South Orange Avenue, Suite 1200  
Orlando, FL 32801-3336  
407.423.4000

**Tallahassee**

Highpoint Center, 12th Floor  
106 East College Avenue  
Tallahassee, FL 32301  
850.224.9634

**Tampa**

SunTrust Financial Centre  
401 East Jackson Street, Suite 1700  
Tampa, FL 33602-5250  
813.223.7333

**Tysons Corner**

8100 Boone Boulevard, Suite 700  
Vienna, VA 22182-2683  
703.790.8750

**Washington, D.C.**

801 Pennsylvania Avenue N.W., Suite 600  
Washington, DC 20004  
202.393.6222

**West Palm Beach**

Esperante Building  
222 Lakeview Avenue, Suite 400  
West Palm Beach, FL 33401-6183  
561.653.5000

[akerman.com](http://akerman.com)

