

Filing and Recording Taxes

Four states, Alabama, Florida, Maryland and Tennessee have special provisions for the payment of taxes relating to UCC Financing Statements, in addition to the normal filing fees pertaining to these filings.

Alabama Mortgage Tax

Mortgage Tax & Judge of Probate Filings

When preparing a Judge of Probate filing it is necessary to determine whether a mortgage filing including the concerned collateral has been made for any related real estate. If such a filing has been made, it is necessary to reference the mortgage document by book & page number and date in the collateral box on the UCC-1 along with a statement that the UCC-1 is filed as additional security to the real estate mortgage. It is then necessary to determine whether the mortgage tax has previously been paid for the collateral that will be covered by the UCC filing. If the tax was previously paid, no further tax is due. In such cases, it is recommended that item 7 on the Alabama form indicate that no tax is due.

Calculating the Mortgage Tax

(Ala. Code § 40-22-2, et seq.):

The mortgage tax is payable only when a filing is made with the Judge of Probate. Where the collateral on the financing statement consists solely of accounts, contract rights, or general intangibles, then no mortgage tax is due. When the tax applies, the financing statement is required to contain language declaring the amount of initial indebtedness. Be certain Item 7 on the Alabama form is completed when filing at the Judge of Probate's office.

The tax rate is \$.15 per \$100.00 or fraction thereof of the initial indebtedness secured. Payment must be made at the time of filing. (* Tuscaloosa County it increases at \$1000.00 to \$1.50 per)

Alabama law has established procedures for the proration of taxes based on collateral located without the state or within multiple counties of the state. Whatever percentage of the collateral is located in a particular county, that is the percentage upon which tax is due (i.e. if 10% of a certain collateral is located in a county, take the debt amount - or 10% of the total - and calculate the tax based on that figure).

Florida Documentary Stamp Tax

Calculating the Documentary Stamp Tax (FSA § 201.22):

There is a provision in Florida law requiring that a tax be paid on certain types of recordable instruments. F.S.A. § 201.22 states:

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 instruments that may be secured by said financing statement. The failure to pay the tax required by this chapter as so stated shall be subject to the penalties provided by this chapter. The actual cost of these taxes as determined by F.S.A. § 201.08 is 35 cents on each \$100.00 or fraction thereof of the indebtedness.

Effective 07/01/02, if a subsequent security agreement or other evidence of indebtedness is filed to evidence an indebtedness or obligation upon which tax was paid, tax shall be paid on the security agreement or other evidence of indebtedness on the amount of the indebtedness or obligation evidenced which exceeds the aggregate amount upon which the tax was previously paid.

The Documentary Stamp Tax must be paid concerning all security agreements that are either made, executed or delivered in Florida.

When the collateral is not entirely located in Florida, then the tax applies to the principal amount of the debt in the same ratio that the value of the secured property located in Florida bears to the value of the entire property.

Methods of Paying the Tax:

Filings Made with the Secretary of State (unrecorded filings):

Payment is made directly to the Department of Revenue as follows:

Tax Payors With 5 Or More Transactions Per Month

Tax payors with 5 or more transactions per month must register with the Dept. of Revenue and remit taxes due directly to the department. The tax shall be remitted on returns available from the Department on a monthly, quarterly, semi-annual, or annual basis, depending on the amount of tax due.

Tax Payors With Less Than 5 Transactions Per Month

Tax payors with less than 5 transactions per month are required to remit and report the Documentary Stamp Tax due directly to the Department no later than the 20th day of the month following the month in which the tax is due. Tax Returns will be available from the Department. Such tax payors have the option of registering with the Department and filing monthly, quarterly, or semi-annually depending on the amount of tax due. However, once the reporting frequency is assigned, the tax return must be filed regardless of whether any tax is due.

Filings Made with the Clerk of the Circuit Court (recorded filings):

Pay the Clerk of Circuit Court directly at the time of recordation. An additional check must be sent to the Clerk of the Circuit Court and that officer will indicate payment for the Documentary Stamp Tax. You must submit the security agreement to be filed along with the check. The calculations for the taxes due should be made by the filing party based on the amount of indebtedness.

For more specific information, please contact the following:

Documentary Stamp Tax Section, Department of Revenue
Room 142
The Carlton Building
Tallahassee, FL 32399-0100
(850) 488-3016

Maryland Recordation Tax

Recordation Tax - (MD An Code § 12-101 to 12-113)

Maryland has enacted a recordation tax found in the Maryland Annotated Code Title 12 entitled the Tax-Property Article. This tax applies to UCC financing statements, although there are some circumstances in which financing statements can be exempt from the recordation tax. When the tax is applicable to financing statements, it must be paid at the time of filing in addition to the regular filing fees.

Because of this additional tax, the Maryland statute concerning UCC requires that a financing statement contain the following:

A financing statement shall also indicate whether or not the underlying secured transaction or transactions being publicized by such financing statement are subject to the recordation tax imposed by Title 12 of the Tax-Property Article, or whether partially subject. If such transaction or transactions are wholly or partially subject to the recordation tax then the principal amount of the debt initially incurred shall be stated for the purpose of computing the tax then payable, and the payment and collection of subsequent taxes by reason of additional indebtedness shall be governed by Title 12 of the Tax-Property Article. (MD An Code § 9-402(9))

In other words, in addition to the formal requisites of a financing statement, all UCC financing statements to be filed in Maryland must contain the following:

A statement as to whether or not the financing statement is subject to the recordation tax and;

If it is subject to the recordation tax, the principal amount of the debt secured OR If it is not subject to the recordation tax, the phrase "Not Subject to Recordation Tax" and the reason for exemption (i.e. "Security Interest is in Inventory.")

Note: Baltimore County requires that an intake sheet be submitted with financing statement for recordation tax purposes. This requirement is only applicable to this county.

Exemptions

In the following cases, UCC financing statements do not require the payment of any recordation tax. MD An Code § 12-108(k) provides as follows:

A security agreement filed or recorded under the Maryland Uniform Commercial Code is not subject to the recordation tax, if it is filed or recorded:

to perfect a security interest in inventory;

to perfect a security interest in contract rights, general intangibles, or accounts;

to perfect a security interest in farm products or in equipment used in farming operations;

to perfect a security interest taken or retained by a seller of collateral to secure all or part of its price; or

to publicize a lease of goods or fixtures, provided that the security agreement states on its face that it does not create a security interest.

If it is filed or recorded with the Department of Assessments and Taxation under section 9-501(a)(2) of the Commercial Law Article.

Calculation of Recordation Tax

Once it has been determined that the tax is applicable, the amount of tax needs to be calculated. Each filing office sets its own tax rates. These tax rates are applied to each \$500 of the principal amount of the debt secured. When this figure is an odd number to work with, the principal amount should always be rounded up to the next highest \$500. For example, when the principal amount of debt is \$21,150, round this figure up to \$21,500 in order to calculate the recordation tax.

Additionally, when the security interest secures personal property that is partially located in Maryland, the tax applies to the principal amount of the debt in the same ratio that the value of the personal property located in Maryland bears to the value of the entire personal property. If part of the collateral is exempt from the tax, the tax would be based only on the portion of the debt that is subject to the tax.

The tax is calculated on the amount of indebtedness incurred at the time of the filing. If any additional debt is incurred after the financing statement is filed, a statement of the amount must also be paid on or before seven days after the additional debt is incurred.

The actual principal amount of debt secured should be provided by the customer and be noted on the financing statement. This is extremely important. The customer must be the one to determine the principal amount of debt as it relates to any security agreement. We cannot determine this figure independently. We can, however, assist the customer in calculating the amount of tax owed.

Tennessee Recordation Tax

Calculation of the Recordation Tax (TSA § 67-4-409):

There is a special provision in Tennessee law requiring that a tax be paid at the time of filing certain documents. TSA § 67-4-409(b) states:

Prior to the public recordation of any instrument evidencing an indebtedness, including but not limited to mortgages, deeds of trust, conditional sales contracts, financing statements contemplated by the Uniform Commercial Code, and liens on personalty, other than on motor

vehicles, there shall be paid a tax, for state purposes only, of eleven and one-half (11.5) cents on each one hundred dollars (\$100) or major fraction thereof of the indebtedness so evidenced.

The tax shall not be required for the recordation of judgment liens, contractors' liens, subcontractors' liens, furnishers' liens, laborers' liens, mechanics' and materialmen's liens, **financing statements filed pursuant to the Uniform Commercial Code which secure an interest solely in investment property**, and mortgages or deeds of trust issued under the Home Equity Conversion Act, as compiled in title 47, chapter 30, and which are labeled on the face under the provision of such chapter.

This tax will not apply with respect to the first two thousand dollars (\$2,000) of the indebtedness.

Where any part of the property used as security for the payment of the debt is located part within Tennessee and part without, the tax applies to the principal amount of the debt in the same ratio that the value of the secured property located in Tennessee bears to the value of the whole property.

All recorded financing statements must contain the following language: **"Maximum principal indebtedness for Tennessee recording tax purposes is \$_____."** If the financing statement is exempt from the tax, indicate an amount of \$0.00 indebtedness.

Or, if the financing statement is being filed to secure an obligation other than for a specific amount of money, the tax will be based on the value of the property covered by the statement. In this case, a valuation statement including a sworn statement by the owner of the property must be attached to the financing statement. Also, the following language must appear on the financing statement: **"Secures obligation other than payment of specific sum - valuation statement submitted herewith."**

If there is an increase in the indebtedness beyond the amount stated in the filed financing statement, the secured party should pay the tax on the increase within sixty (60) days of the date the increase occurs.

The tax must be paid to the filing officer at the time of filing. Whenever the tax is paid at the county level there is an additional \$1.00 fee. If a filing is made in more than one office (i.e.: Secretary of State and County), file one first to receive the acknowledgment copy that serves as proof of payment of the tax. Then, submit the other filing with a copy of the acknowledgment attached. (Since Tennessee is not a dual filing state, this should not present a timing problem in most instances.)