SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1542

SPONSOR: Finance and Taxation Committee and Senator Sebesta

SUBJECT: Document Excise Tax Exemption

DATE: Apri 24, 2001 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Johansen	FT	Favorable/CS
2.				
3.				
4.				
5.				
6.				

I. Summary:

This committee substitute amends the documentary stamp tax provisions regarding deeds to provide that:

The documentary stamp tax is not chargeable as to a deed, transfer, or conveyance of homestead real property between spouses for the purpose of creating a tenancy by the entireties.

The documentary stamp tax does not apply to a contract to sell the residence of an employee relocating at his or her employer's direction or documents related to the contract. Taxes on such transactions apply only to the transfer of the property by deed.

The documentary stamp tax on a certificate of title is calculated solely on the final bid amount if the certificate of title is issued to the party in whose favor the judgment of foreclosure is granted in the foreclosure proceeding, notwithstanding the amount of any underlying indebtedness. This bill further provides that this provision applies retroactively, except that all taxes that have been collected must be remitted and taxes remitted before the effective date are not subject to refund.

This bill substantially amends section 210.02 of the Florida Statutes.

II. Present Situation:

Section 201.02, F.S., imposes a tax on deeds, instruments, or writings, whereby any lands, tenements, or other realty, or any interests therein is granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person by his or her direction. The tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made. A documentary stamp tax is also assessed on mortgages and stock certificates. The total of all documentary stamp taxes under ch. 201, F.S., collected in fiscal year 1999-2000 was $1,212,177,570.

Currently, the tax under s. 201.02, F.S., on deeds, instruments, documents, or writings whereby any lands, tenements, or other realty or any interest therein is transferred or conveyed is 70 cents on each $100 or fractional part thereof of the consideration paid, or to be paid. "Consideration" under s. 201.02, F.S., includes, money paid or to be paid, the amount of any indebtedness discharged by a transfer of any interest in real property, mortgage indebtedness and other encumbrances which the real property interest being transferred is subject to, notwithstanding that the transferee may be liable for such indebtedness. Where property other than money is exchanged for interests in real property, there is the presumption that the consideration is equal to the fair market value of the real property interest being transferred

Transfers Between Spouses

A transfer of unencumbered real property between spouses is not taxable, except that any consideration paid by one spouse to the other spouse for additional shares greater in value than their undivided interest is taxable. Where the property is encumbered, however, the documentary stamp tax on the transfer is based on the mortgage balance in proportion to the interest transferred by the grantor.

For example, assume an unmarried person purchases a house and later marries. After the marriage, the person then wishes to add the spouse's name to the title. If the house is worth $150,000 and is encumbered by a $120,000 mortgage, the documentary stamp tax due on the conveyance that creates joint ownership is $420, calculated as follows: $60,000 (1/2 of the outstanding mortgage balance) x 0.007 (70 cents per $100) = $420.

This same rule used to apply to deeds when a spouse or former spouse would transfer title to a jointly owned home subsequent to divorce. However, in 1997, s. 201.02(7), F.S., was created to exempt from the documentary stamp tax any deed, transfer, or conveyance of the marital home, or any interest therein, between spouses or former spouses upon dissolution of their marriage. The exemption applies regardless of any consideration, including the assumption of underlying indebtedness.

A "tenancy by the entireties" is a "tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, other takes whole to exclusion of deceased heirs."

Section 196.031, F.S., provides that certain real property is entitled to what is known as a "homestead tax exemption". To obtain the exemption, the owner must reside on the property and must intend that the property is a permanent residence.

Documentary Stamp Tax and Foreclosures

At the conclusion of a foreclosure proceeding, a clerk of court issues a certificate of title to the winning bidder. The certificate of title is recorded, and shows in the public record the transfer of title, as a deed does. A clerks' certificate of title is subject to documentary stamp taxes imposed by s. 201.02, F.S. The general rule is that the documentary stamp tax is calculated using the final bid price. 1953-1954 Op.Atty.Gen. 267. The clerk of court must collect the documentary stamp tax due from the winning bidder before issuing the certificate of title. 1960 Op.Atty.Gen., 060-177.

In practice, clerks of court have calculated the documentary stamp on behalf of the parties, and utilized solely the final bid in the calculation. If the foreclosure is a foreclosure of the first mortgage, as the vast majority of foreclosures are, the clerk's calculation based solely on the amount of the winning bid is the correct calculation. If the plaintiff is foreclosing a second mortgage, however, the clerk's calculation based solely on the bid amount will be incorrect. Section 201.02, F.S., was amended in 1990 to add the following:

For purposes of this section, consideration includes, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed.

Subsequent to this change, the calculation of the documentary stamp tax on a foreclosure of an inferior lien (including a foreclosure of a second mortgage, homeowners' association fees, or condominium or cooperation association fees) must use the bid amount plus the outstanding balance of the first mortgage as the consideration upon which the documentary stamp tax is calculated. In practice, clerks of court calculating the documentary stamp tax on a certificate of title will not research the property records to discover the existence of superior liens, and plaintiffs and their counsel have unwittingly and uniformly failed to pay the correct documentary stamp tax since s. 201.02, F.S., was amended.

Documentary Stamp Tax and Employee Relocation Companies

Companies that relocate employees will often provide assistance with relocation expenses. One form of assistance is help in selling the employee's home. Employee relocation companies specialize in assisting employees and employers with the process. Typically, the employee will be given a brief period of time within which to market the property on his or her own. At the end of that period, the employee relocation company will typically pay to the employee the employee's equity in the home (the appraised price of the property less the amount of the standard local real estate commission and less closing costs that a seller would ordinarily pay). The employee relocation company is then solely responsible for marketing and sale of the property. When the employee relocation company finds a buyer for the home, a deed is prepared from the employee to the purchaser and the transfer is completed.

In the usual employee relocation transaction, a documentary stamp tax is only paid when the deed between the employee and the purchaser is recorded. There is a question, however, whether a documentary stamp tax is also due on the transaction whereby the employee is paid the employee's equity in the home.

III. Effect of Proposed Changes:

This bill amends s. 201.02(7), F.S., to provide that the documentary stamp tax is not chargeable as to a deed, transfer, or conveyance for the purpose of creating a tenancy by the entireties in property to which the homestead tax exemption is applicable.

This bill creates s. 201.02(8), F.S., to provide that the documentary stamp tax on a certificate of title is calculated solely on the final bid amount if the certificate of title is issued to the party in whose favor the judgment of foreclosure is granted in the foreclosure proceeding, notwithstanding the amount of any underlying indebtedness. This bill further provides that this provision applies retroactively, except that all taxes that have been collected must be remitted and taxes remitted before the effective date are not subject to refund.

This bill creates s. 201.02(9), F.S., to provide that the documentary stamp tax is not chargeable on a contract to sell the residence of an employee relocating at the employer's direction, which contract is between the employee or employer and a person in the business of providing employee relocation services, unless the real property comprising the residence is transferred by deed.

The effective date of this bill is July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The recurring fiscal impact on state tax revenues for the exemption regarding transfers between spouses is estimated at ($900,000) annually. The recurring fiscal impact on state tax revenues for the change regarding certain foreclosures is estimated at ($600,000) annually. The recurring General Revenue impacts are ($600,000) and ($400,000) respectively. The recurring fiscal impact on state tax revenues for the change regarding employee relocation companies is indeterminate. The total first year impact of this bill is ($2,000,000); the first year General Revenue impact is ($1,300,000). This bill will have an insignificant impact on local government revenues.

B. Private Sector Impact:

The documentary stamp tax will not apply to a deed, transfer, or conveyance of homestead real property between spouses for the purpose of creating a tenancy by the entireties.

The documentary stamp tax will not apply to a contract to sell the residence of an employee relocating at his or her employer's direction or documents related to the contract.

The documentary stamp tax on a certificate of title is calculated solely on the final bid amount if the certificate of title is issued to the party in whose favor the judgment of foreclosure is granted in the foreclosure proceeding, notwithstanding the amount of any underlying indebtedness

C. Government Sector Impact:

Documentary stamp tax revenue funds several state land acquisition programs and state and local affordable housing programs, as well as general revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.