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HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 1835

RELATING TO: Excise Tax / Real Property

SPONSOR(S): Council on Smarter Government, Committee on Judicial Oversight, and Representative Crow

TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:
(1) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
(2) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

The state collects a documentary stamp tax applicable to certain types of documents. One of the most common documents upon which a documentary stamp tax is due upon is a deed.

This bill 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 for the purpose of creating a tenancy by the entireties.

- 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.

- 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 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 fiscal impact on state tax revenues for the change regarding employee relocation companies is indeterminate. This bill will have an insignificant impact on local government revenues.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes [x]	No []	N/A []
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes [x]	No []	N/A []

For any principle that received a "no" above, please explain:

B. 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.[1] 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.[2]

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[3] on each $100 or fractional part thereof of the consideration paid, or to be paid.[4] "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.[5]

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.[6]

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[1] F.A.C. 12B-4.011

[2] Tax Statistics from the Department of Revenue, at http://sun6.dms.state.fl.us/dor/tables/f2fy00.html.

[3] In Dade County, the rate is 60 cents per $100 consideration, although the county imposes an additional 45 cents local surtax.

[4] F.A.C. 12B-4.012(1)

[5] F.A.C. 12B-4.012(2)

[6] F.A.C. 12B-4.013(32)

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.[7] 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."[8]

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

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[7] Chapter 97-191, L.O.F., HB 153, by Representative Thrasher.
[8] Black's Law Dictionary, 6th Edition, at 1465.

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.

C. 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.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Deeds between spouses: On March 23, 2001, the Revenue Estimating Conference estimated that this proposed change will result in an annual negative fiscal impact on revenues of $900,000.[9]

   Foreclosures: On March 30, 2001, the Revenue Estimating Conference estimated that this proposed change will result in an annual negative fiscal impact on revenues of $600,000.

   Relocation Companies: On March 30, 2001, the Revenue Estimating Conference estimated that this proposed change will result in an indeterminate fiscal impact.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill will have an insignificant negative impact on local governments. Section 201.11(2), F.S., provides that the county comptroller, or, the clerk of the court if there is no county comptroller, receives a collections commission of 0.5% of documentary stamp tax collected.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will directly benefit persons who transfer title to their home to themselves and their spouse by exempting the transaction from documentary stamp tax.

This bill will directly benefit persons foreclosing second mortgages, and homeowners' and condominium associations that are foreclosing to collect fees due to them, by lessening the amount of documentary stamp tax that they have to pay as part of the foreclosure process.

This bill will directly benefit employee relocation companies by providing that they will not be liable for documentary stamp tax on certain transactions.

D. FISCAL COMMENTS:

The documentary stamp tax on deeds is expected to generate approximately $767.3 million in FY 2001-2002. The approximate cost of the current tax exemption for deeds relating to dissolution of marriage exemption is $5.6 million.[10]

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[9] This estimate was contingent upon an amendment to the bill that would limit the exemption to only transfers between spouses. That amendment was subsequently adopted, and the bill thus complies with the contingency.
[10] 2001 Florida Tax Handbook, at pages 48-49.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 2001, the Council on Smarter Government adopted two amendments to this bill:

1. This amendment conformed the bill to the suggestion of the Revenue Estimating Conference and the Department of Revenue that the language regarding the transfers between spouses more specifically state that it only applies to a transfer between spouses.

2. This amendment added the exemption regarding employee relocation companies.

The bill was then reported favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:	Staff Director:
Nathan L. Bond, J.D.	Lynne Overton, J.D.

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:	Staff Director:
Nathan L. Bond, J.D.	Don Rubottom