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DATE: May 6, 2002

**\*\*AS PASSED BY THE LEGISLATURE\*\***  
**CHAPTER #: 2002-26, Laws of Florida**

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUDICIAL OVERSIGHT  
FINAL ANALYSIS**

**BILL #:** HB 123, 1ST ENG. (SIMILAR PROVISIONS PASSED IN CS/SB 462, 1ST ENG.)

**RELATING TO:** Excise Tax on Documents

**SPONSOR(S):** Representatives Baxley and others

**TIED BILL(S):** none

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
  - (2) FISCAL RESPONSIBILITY COUNCIL YEAS 23 NAYS 0
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This act provides that the excise tax on documents is limited to \$2,450 on promissory notes, nonnegotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation made, which are executed, delivered, sold, transferred, or assigned in the state, including those documents made in connection with sales made under retail charge account services. Under current tax rates, \$2,450 is the amount of excise tax due on a promissory note or other unsecured obligation in the amount of \$700,000.

This act also eliminates the discriminatory exemption to the equalization excise tax for products made with domestically grown citrus.

The limitation on the excise tax on documents is expected to be revenue-neutral to the state. The elimination of the discriminatory exemption to the equalization excise tax will have a \$600,000 positive annual fiscal impact on state revenues. This act does appear to have a fiscal impact on local governments.

**On March 19, 2002, CS/SB 462 was substituted for HB 123, 1st Engrossed, which was laid on the table. CS/SB 462, 1st Engrossed, became law on April 16, 2002, as Chapter 2002-26, Laws of Florida (the "act"). The effective date of the act is July 1, 2002. This analysis, with certain exceptions, is of Chapter 2002-26, Laws of Florida. The exceptions are those sections that address the House bill, which are clearly identified.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input checked="" type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

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

The elimination of the equalization excise tax for products made with domestically grown citrus is a tax increase.

B. PRESENT SITUATION:

**Excise Tax on Documents**

Chapter 201, F.S., imposes an excise tax<sup>1</sup> on promissory notes, nonnegotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation made, which are executed, delivered, sold, transferred, or assigned in the state, including those documents made in connection with sales made under retail charge account services. Mortgages, including those mortgages executed outside the state and recorded in the state, which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax. When there is a mortgage, trust deed, or security agreement and a note, certificate of indebtedness, or obligation, the tax must be paid on the mortgage, trust deed, or security agreement at the time of recordation, and a notation made on the note, certificate of indebtedness, or obligation that the tax has been paid on the mortgage, trust deed, or security agreement. Section 201.08, F.S., provides that the tax rate shall be 35 cents on each \$100 or fraction thereof of the amount of indebtedness or obligation evidenced by the document.

Florida residents and companies can execute outside of the state of Florida promissory notes, nonnegotiable notes, and other unsecured obligations to pay money. When executed outside of Florida, these instruments are not subject to Florida documentary stamp tax. When the amount of tax that would be due on a Florida transaction is significantly greater than the cost of closing a business transaction outside of Florida, the parties to the transaction sometimes leave the state to conduct the transaction or hire out-of-state companies.

**Excise Tax on Citrus**

Citrus comprises the major agricultural crop of Florida. The growing, harvesting, packing, processing, reprocessing, mixing, blending of the crop, together with the sale and distribution of the crop affects the health, morals and general economic well-being of a vast number of Florida citizens who are either directly or indirectly dependent upon the success of the citrus industry. Realizing the citrus industry's immense impact on Florida's economy, the Legislature created the Florida Citrus

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<sup>1</sup> This excise tax is commonly referred to a documentary stamp tax.

Commission in 1935 in order to regulate and market citrus products from Florida. In order to improve efficiency, the Legislature restructured state government in the 1960's and consolidated the various agencies in the executive branch into twenty-five departments. Since the general economy of the state continued to be dependent upon the citrus industry, the Legislature created the Department of Citrus as one of the twenty-five agencies, with the Florida Citrus Commission being designated as the Department's agency head. Section 20.29(l), F.S. The Department is in charge of regulation, research, advertising and marketing for the Florida citrus industry.

To fund these public interests the Legislature has imposed two taxes for the purpose of generating revenue, which is then appropriated to the Department for its operations and programs. The first tax, carbonyl known as the Box tax, is codified in s. 601.15, F.S., and is an excise tax levied upon "each standard field box grown and placed into the primary channel of trade in this state". This tax was the Department's primary revenue source from 1935 until 1971. This tax has survived a constitutional challenge. *C.V. Floyd Fruit Company v. Florida Citrus Commission*, 175 So. 248 (Fla. 1937).

The second tax is the Equalization tax. In the late 1960's, the international market for Florida citrus juice exceeded Florida's ability to produce the juice. For this reason, and also as a hedge against freezes and other causes resulting in a reduced Florida harvest, the citrus industry began importing frozen concentrated orange juice (FCOJ) from other states and foreign nations to be mixed, blended, processed and reprocessed with Florida juice. To this day, almost all FCOJ sold in the United States is manufactured as a blended product using juice of foreign countries and the United States. The Department of Citrus is mandated to conduct campaigns for commodity advertising, publicity and sales promotions to increase the consumption of citrus fruits and juices. Since the benefits of these campaigns are no longer just Florida growers and manufacturers, but now include the growers, manufacturers and importers of FCOJ from out of state, it was early on deemed logical that these entities should share in the Department's costs. As a result, the 1970 Legislature implemented the Equalization tax, codified in s. 601.155, F.S. The Equalization tax is an excise tax upon the activity of processing, reprocessing, blending, mixing, packaging, or repackaging of processed orange or grapefruit products or foreign citrus juices or upon the removal of any portion of such products from the original container in which it arrives in the state. Non-Florida domestic juices, primarily from California, Texas, and Arizona, are exempt from the Equalization tax.

Both the Box tax and the Equalization tax are calculated annually based upon the budget of the Department of Citrus, the amount of Florida fruit expected to be harvested, and the amount of FCOJ expected to be imported. For the last three years, the Equalization tax has been approximately 2.7 cents per single strength equivalent gallon.

**C. EFFECT OF PROPOSED CHANGES:**

This act amends 201.08, F.S., to limit the excise tax under that section to \$2,450 on promissory notes, nonnegotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation made, which are executed, delivered, sold, transferred, or assigned in the state, including those documents made in connection with sales made under retail charge account services. Under present tax rates, \$2,450 is the amount of documentary stamp tax that would be due on a promissory note or other unsecured obligation in the amount of \$700,000.

This act also eliminates the exemption from the excise tax under s. 601.155, F.S. (the Equalization tax), thus making the tax applicable to domestic FCOJ (primarily from California, Texas and Arizona).

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:

No fiscal impact on state revenues is expected from the limitation on the excise tax imposed by s. 201.02, F.S.

The removal of the exemption for domestic FCOJ under s. 601.155, F.S., is estimated to increase state revenues by \$600,000 annually.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and businesses are expected to conduct more financial transactions involving unsecured obligations in amounts larger than \$700,000 in Florida. Florida residents will lose the incentive to borrow money in neighboring states in order to reduce their tax burden; and citizens of the thirty-nine other states that impose some form of excise tax similar to s. 201.08, F.S.<sup>2</sup> may have an incentive to borrow money in Florida in amounts larger than \$700,000.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

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<sup>2</sup> 2001 Florida Tax Handbook, Senate Finance and Taxation Committee, et. al.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

On March 15, 2002, the Circuit Court for the Tenth Judicial Circuit ruled that the Equalization Tax violates the Commerce Clause of the United States Constitution because the tax only applies to FCOJ from foreign countries, exempting FCOJ from the other states. The removal of the exemption for FCOJ from other states, as provided for in this act, appears to make the Equalization Tax constitutional.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 11, 2002, the Fiscal Responsibility Council adopted two amendments to HB 123. The first amendment clarifies that when there is a mortgage and a note, and the tax is paid solely based on the note, tax will apply if the mortgage is subsequently recorded in Florida. Such tax will be due on the mortgage to the extent that the amount evidenced by the mortgage exceeds the amount paid on the note. The second amendment is a technical amendment correcting references. The bill was then reported favorably, as amended. On February 13, 2002, the same amendments were adopted by the Senate Committee on Finance and Taxation, which reported the bill favorably as a committee substitute.

On March 19, 2002, the House substituted CS/SB 462 for HB 123, 1st Engrossed. The House then adopted the amendment adding the provision eliminating the exemption for FCOJ from other states. CS/SB 462 then passed the House, as amended. The Senate concurred in the amendment on March 22, 2002.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Lynne Overton

Staff Director:

Lynne Overton

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**AS REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:**

Prepared by:

Staff Director:

Joe McVaney

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David Coburn

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**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:**

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

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