

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 180
SPONSOR: Finance and Taxation Committee and Senator Silver
SUBJECT: Excise Tax on Documents
DATE: February 13, 2002 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 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. It 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 committee substitute allows the notation of payment of documentary stamps required by s. 201.132, F.S., to be made by initials or a stamp, in addition to the signature required by current law.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 201.02 and 201.132.

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.

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 clerk's 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.

Section 201.132, F.S., provides that the county comptroller or clerk of the circuit court may collect documentary stamp taxes without affixing stamps to the document to be recorded if certain conditions are met, including the placement of a signed notation showing the amount of tax paid on the document being recorded.

III. Effect of Proposed Changes:

This committee substitute 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. It 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 committee substitute also amends s. 201.132, F.S., to allow the notation placed on documents to be recorded to include the initials or stamped initials or signature of the county comptroller or clerk of the court, as well as his or her signature. This conforms the law to current practice.

This bill takes effect upon becoming a law.

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 Revenue Estimating Conference determined that this bill would result in a loss of an insignificant amount of revenue.

B. Private Sector Impact:

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
