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 462

SPONSOR: Finance and Taxation Committee and Senator Pruitt

SUBJECT: Excise Tax on Documents

DATE: Feburary 13, 2002 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Birnholz	Maclure	CM	Favorable
2.	Fournier	Johansen	FT	Favorable/CS
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

This committee substitute provides that the documentary stamp tax shall not exceed $2,450 on new or renewed promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, which are executed, delivered, sold, transferred, or assigned in the state, including those documents relating to sales made under retail charge account services, incident to sales which are not conditional in character and which are not secured by mortgage or other pledge of purchaser.

It also provides that if a mortgage, trust deed, security agreement, or other evidence of indebtedness is subsequently filed in Florida to secure a transaction upon which tax was capped, tax is due on the subsequent transaction on the amount of indebtedness shown on the document which exceeds the aggregate amount upon which tax was previously paid.

This bill substantially amends section 201.08, Florida Statutes.

II. Present Situation:

The documentary stamp tax is actually two taxes imposed on different bases at different tax rates.[1] (*See* ch. 201, F.S.) Deeds and other documents related to real property are taxed at the rate of 70 cents per $100 (s. 201.02, F.S.). New or renewed promissory notes, nonnegotiable notes, written obligations to pay money, and other compensation made, executed, delivered, sold, transferred, or assigned in the state are taxed at 35 cents per $100 (s. 201.08, F.S.). Revenue from documentary stamps is divided between the General Revenue Fund and various trust funds used to acquire public lands or support affordable housing.[2]

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[1] Senate Finance and Taxation Committee, et. al., *2001 Florida Tax Handbook*, p. 47.

[2] *Id.*

Taxes on documentation of the recording or transfer of certain intangibles are levied by 39 states and the District of Columbia.[3] Although most of these states levy document-recording taxes only on real estate, many, including Florida, have a more general tax levied on the transfer of deeds. In many states the rates vary as a result of surtaxes or increased rates intended to pick up expiring federal taxes. In other states, county and municipal governments were allowed to pick up the expiring federal taxes.

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 the state's 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.[4]

Mortgages, trust deeds, security agreements, or other evidences of indebtedness filed or recorded in this state are also taxed at 35 cents on each $100 or fraction thereof, even if they are executed outside the state.

III. Effect of Proposed Changes:

This committee substitute amends s. 201.08, F.S., to provide that the documentary stamp tax shall not exceed $2,450 on new or renewed promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, which are executed, delivered, sold, transferred, or assigned in the state, including those documents relating to sales made under retail charge account services, incident to sales which are not conditional in character and which are not secured by mortgage or other pledge of purchaser. Under present law, $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. The proposed committee substitute also provides that if a mortgage, trust deed, security agreement, or other evidence of indebtedness is subsequently filed or recorded in this state to evidence an indebtedness or obligation upon which tax was capped at $2,450, tax shall be paid on the amount of the indebtedness which was not taxed because of the cap.

The bill shall take effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[3] *Id*., p. 48.

[4] *See* the Department of Revenue analysis of a proposed 2001 bill for the Revenue Estimating Conference, *at* http://www.state.fl.us/edr/Conferences/Revenue_Impact/Impact_pdf/impact19-23.pdf, February 9, 2001, and Florida TaxWatch, *Budget Fax 2001*, Volume VII, Issue 1, March 19, 2001.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Based on the Revenue Estimating Conference's analysis of this bill, it can be estimated that the cap on documentary stamp taxes authorized in this bill will be revenue neutral because the cap-related loss of revenue from individual transactions will be offset by the revenue generated by transactions that previously would have been conducted outside of the state.

B. Private Sector Impact:

This bill provides that the documentary stamp tax shall not exceed $2,450 on certain new or renewed promissory notes and other unsecured obligations. With regard to the impact on the private sector, the Department of Revenue notes:

> Little data exists on the number of unsecured notes closed out-of-state or even on such notes closed in-state. One source of data is the DR-228 forms filed by unregistered taxpayers. Unregistered taxpayers cannot have more than four taxable transactions per month. While tax on stock certificates and some transfers of real property and unrecorded deeds is paid on this form, the great majority of tax is evidently from unsecured notes. Tax on unsecured notes is also paid by registered taxpayers, but on a different form with insufficient detail to isolate the unsecured notes. In fiscal 1999-00, $1.1 million was collected from unregistered taxpayers on 3,224 transactions. Of these forms, all but 80 were for tax amounts less than $2,450. However, the 80 transactions paying over $2,450 remitted just under $500,000. In fiscal 2000-01, $737,000 was collected from unregistered taxpayers on 1,920 transactions. Of these, all but 60 were for tax amounts less than $2,450. These 60, however, remitted tax of $337,000. As stated above, it is not certain all these monies came from unsecured loans.[5]

C. Government Sector Impact:

None.

[5] Department of Revenue analysis of a SB 462 for the Revenue Estimating Conference, January 15,2002.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.