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HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE & TAXATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: PCB FT 97-01

RELATING TO: Taxation

SPONSOR(S): Finance and Taxation Committee

STATUTE(S) AFFECTED: Sections 199.143, 201.08, 209.09, and 201.091, Florida Statutes

COMPANION BILL(S): SB 648 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCE & TAXATION YEAS 8 NAYS 0
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I. SUMMARY:

The bill makes changes to the intangibles tax and documentary stamp tax provisions. It provides that lines of credit secured by mortgages on the secondary or vacation homes of the borrower will be taxed in the same manner as the primary home. It defines renewals as only those documents which change the terms of indebtedness by adding an obligor, increases the principal amount balance, or changes the interest rate, maturity date, or payment terms. It provides that to determine the taxable status of a document, only the document and any document expressly incorporated therein may be used. It eliminates multiple taxation when a mortgage, trust deed, or security agreement is given by a taxpayer different than or in addition to the taxpayer obligated on the primary obligation. It exempts renewal notes evidencing a revolving line of credit which is executed only by the original obligor for no more than the original face amount of the obligation. Finally, it permits taxpayers to correct errors in tax payments if the only reason a document is not exempt is due to nonpayment or underpayment of tax.

The state fiscal impact of the bill will be a negative ($0.66) million annualized for the documentary stamp tax. Negative cash impacts of ($0.43) million result in FY 1997-98 and ($0.35) million in FY 1998-99. The bill also results in a negative fiscal impact of ($1.03) million annualized and has negative cash impacts of ($0.87) million in FY 1997-98 and ($0.91) million in FY 1998-99 for the intangibles tax. The bill has a negative local impact on the County Revenue Sharing Trust Fund of ($0.57) million annualized and negative cash impacts of ($0.47) in FY 1997-98 and ($0.50) in FY 1998-99.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 199.133, F.S., imposes a nonrecurring tax of 2 mills on each dollar of the just value of all notes, bonds, and other obligations for payment of money which are secured by mortgage, deed, or other lien upon real property in Florida.

Section 199.143, F.S., applies the nonrecurring tax to lines of credit and future advances secured by mortgages upon real property. If the line of credit is secured by a mortgage on the residence of the borrower (primary home), the tax is applied to the maximum amount of the line of credit and no additional tax is due upon any future borrowing under the line of credit. For example, a homeowner has a $100,000 line of credit with a bank secured by the primary residence of the homeowner. Although only $5000 is advanced at the time of the execution of the line of credit, the tax is applied to the maximum amount of the line of credit ($100,000).

If the line of credit is secured by a mortgage on any other property, the tax is applied to the original indebtedness and each time an additional amount is borrowed under the line of credit. For example, a homeowner has a $100,000 line of credit with a bank secured by the homeowner’s vacation home. Again, only $5000 is advanced at the time of execution of the line of credit. The tax is applied to only the amount advanced ($5000) but is also applied to each future borrowing under the line of credit. After a series of borrowings and repayments, the tax on this type of line of credit may exceed the tax on the maximum amount of the line of credit.

Section 201.08, F.S., imposes a tax on promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, executed, delivered, sold, transferred, or assigned in the state and on each renewal of the same and on mortgages, trusts deeds, security agreements, or other evidences of indebtedness filed or recorded in this state, and for each renewal. The tax is 35¢ per $100 of the indebtedness or obligation.

When there is both a mortgage, trust deed, or security agreement and a note, certificate of indebtedness, or obligation, the tax is due on the mortgage, trust deed, or security agreement at the time of recordation and a notation is made on the note, certificate of indebtedness, or obligation that the tax has been paid and the property stamps affixed on the mortgage, trust deed, or security agreement. The Department of Revenue (department) also recognizes that there may be more than one document in a single transaction. Until recently, the department has taken the position that when multiple documents are involved taxability will be determined solely from the face of the document and any other document which is incorporated into the document. Recently, <u>Computer Sales International v. DOR</u>, 666 So.2d 142 (Fla. 1st DCA 1995), was decided. It held that multiple documents may be read together to form a single taxable contract. An amendment or modification to one of the multiple documents could constitute a renewal. Such amendments can cause additional tax unless carefully structured or unless executed and delivered outside of the state.

Currently, documentary stamp tax is imposed on multiple documents when a promissory note is made by one party and a mortgage for the promissory note is given by another party. This is because the documents evidence separate obligations. When related borrowers cross-collateralize or cross-guaranty, then each borrower is a direct obligor on his or her own note and on the note of the related borrowers.

Section 201.09, F.S., provides exemption of renewal notes. If a renewal note is executed by the same obligors and continues the identical contractual obligations without enlargement of the original obligation, it is exempt. For revolving lines of credit, one with floating principal balance, the balance is rarely fully funded on a renewal date. In order to periodically renew such obligations, banking institutions either require their customers to repay documentary stamps or structure the transactions to avoid the tax. Typically, institutions require the line to be "funded up" to the original principal amount immediately before the renewal, renew the note tax free pursuant to s. 201.09, F.S., then require repayment of the amount funded. Structuring the renewal in this way avoids the tax on the renewals; however, the method can result in unintended mistakes.

Currently, documents must qualify under s. 201.09, F.S., to be exempt renewals. Payment of documentary stamp tax is a prerequisite to qualify under the section. There is no provision for correcting payment on a prior document; therefore, an error can have the effect of imposing tax on subsequent documents.

B. EFFECT OF PROPOSED CHANGES:

Section 199.143, F.S., is amended. Lines of credit secured by mortgages on the secondary or vacation homes of the borrower will be taxed at the maximum amount of the line of credit without additional tax due at the time of each subsequent borrowing under the line of credit. To receive this tax treatment, the secondary and vacation homes may not be used primarily as rental property.

Section 201.08, F.S., is amended to define a renewal to include only modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Other modifications to documents which do not modify the terms of the indebtedness evidenced are expressly determined not to be renewals and are not subject to the tax. These modifications include those given or recorded to correct error; modify covenants, conditions, or terms unrelated to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add, change, or delete guarantors; or which substitute a new mortgagee or payee.

Subsection (6) is added to section 201.08, F.S., to statutorily overturn Computer Sales International v. DOR, supra. The subsection provides that taxability of a document is determined solely from the face of the document and any separate document expressly incorporated into the document. This additional subsection substantially returns the determination of taxation to the law as interpreted by the department prior to Computer Sales International v. DOR, supra. Consequently, the provision is made effective July 1, 1997, and tax previously imposed but not actually collected on documents exempted by the provision is not due.

Multiple documentary stamp tax imposition is eliminated by the addition of subsection (7) which provides that a mortgage, trust deed or security agreement filed or recorded in this state which is given by a taxpayer different than or in addition to the taxpayer obligated upon the primary note or obligation, or which is given to secure a guaranty or surety of a primary note or obligation, is deemed to evidence and secure the primary note or obligation and not a separate obligation. The tax paid on such obligation is to be paid once, even though more than one mortgage or other security agreement is recorded with respect to the obligation.

Section 201.09, F.S., is amended to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor and renewed or extended by no more than the original face amount of the original contract or obligation.

A new s. 201.091, F.S., is created to permit correcting payment of tax. If the only reason a document is not exempt from tax pursuant to s. 201.09, F.S., is the nonpayment or underpayment of tax, then correcting the error may be accomplished by payment of the correct tax plus interest and penalty.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable

(2) what is the cost of such responsibility at the new level/agency?

Not applicable

(3) how is the new agency accountable to the people governed?

Not applicable

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications reduce taxation.

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications permit taxpayers additional options for transacting business in the state without incurring taxation.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

          Not applicable

      (2) Who makes the decisions?

          Not applicable

      (3) Are private alternatives permitted?

          Not applicable

      (4) Are families required to participate in a program?

          Not applicable

      (5) Are families penalized for not participating in a program?

          Not applicable

   b. Does the bill directly affect the legal rights and obligations between family members?

      No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable

(2) service providers?

Not applicable

(3) government employees/agencies?

Not applicable

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 199.143, F.S., to apply the nonrecurring tax on intangible personal property to lines of credit secured by a mortgage on a secondary or vacation home the same way such tax is applied to lines of credit secured by a mortgage on a primary home. Rather than paying the tax each time a sum certain is borrowed, the tax will be applied to the maximum amount of the line of credit, with no additional tax due each time an amount is borrowed.

Section 2 amends s. 201.08, F.S., to define a renewal to include only modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Other modifications to documents which do not modify the terms of the indebtedness evidenced are expressly determined not to be renewals and are not subject to the tax.

Subsection (6) is added to s. 201.08, F.S., to statutorily overturn Computer Sales International v. DOR, supra. The subsection provides that taxability of a document is determined solely from the face of the document and any separate document expressly incorporated into the document. This provision is made effective July 1, 1997, and tax previously imposed but not actually collected on documents exempted by the provision is not due.

Subsection (7) is added to s. 201.08, F.S., to eliminate multiple documentary stamp tax when a mortgage, trust deed or security agreement filed or recorded in this state is given by a taxpayer different than or in addition to the taxpayer obligated upon the primary note or obligation.

Section 3 amends s. 201.09, F.S., to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor for no more than the original face amount of the original contract or obligation.

Section 4 creates a new section, s. 201.091, F.S., to permit the correcting of errors in tax payments If the only reason a document is not exempt from tax pursuant to s. 201.09, F.S., is the nonpayment or underpayment of tax.

Section 5 provides an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Revenues:	(in millions)
General Revenue Fund	($0.16)
State Housing TF	($0.01)
Local Government Housing TF	($0.03)
CARL TF	($0.01)
Water Management TF	($0.01)
Land Acquisition TF	($0.02)
Total Impact	($0.24)

2. Recurring Effects:

Documentary Stamp Tax Impact:

		(in millions)	
Revenues:	Annualized	1997-98	1998-98
General Revenue Fund	($0.43)	($0.12)	($0.22)
State Housing TF	($0.03)	($0.01)	($0.02)
Local Government Housing TF	($0.06)	($0.02)	($0.04)
CARL TF	($0.04)	($0.01)	($0.02)
Water Management TF	($0.04)	($0.01)	($0.02)
Land Acquisition TF	($0.06)	($0.02)	($0.03)
Total Impact	($0.66)	($0.19)	($0.35)

Intangibles Tax Impact:

Revenues:	Annualized	1997-98	1997-98
General Revenue Fund	($1.03)	($0.87)	($0.91)

3. Long Run Effects Other Than Normal Growth:

   None

4. Total Revenues and Expenditures:

   The bill will result in a negative fiscal impact of ($0.66) million annualized and negative cash impacts of ($0.43) million in FY 1997-98 and ($0.35) million in FY 1998-99 for the documentary stamp tax. The bill will result in a negative fiscal impact of ($1.03) million annualized and negative cash impacts of ($0.85) million in FY 1997-98 and ($0.50) million in FY 1998-99 for the intangibles tax.

Documentary Stamp Tax Impact:

	(in millions)		
Revenues:	Annualized	1997-98	1998-98
General Revenue Fund	($0.43)	($0.28)	($0.22)
State Housing TF	($0.03)	($0.02)	($0.02)
Local Government Housing TF	($0.06)	($0.05)	($0.04)
CARL TF	($0.04)	($0.02)	($0.02)
Water Management TF	($0.04)	($0.02)	($0.02)
Land Acquisition TF	($0.06)	($0.04)	($0.03)
Total Impact	($0.66)	($0.43)	($0.35)

Intangibles Tax Impact

Revenues:	Annualized	1997-98	1997-98
General Revenue Fund	($1.03)	($0.87)	($0.91)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None

2. Recurring Effects:

   Intangibles Tax Impact

Revenues:	Annualized	1997-98	1997-98
County Revenue Sharing TF	($0.57)	($0.47)	($0.50)

3. Long Run Effects Other Than Normal Growth:

Intangibles Tax Impact

Revenues:	Annualized	1997-98	1997-98
County Revenue Sharing TF	($0.57)	($0.47)	($0.50)

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications reduce taxation.

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

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 reduces the amount of revenue of a state tax shared with counties or municipalities but does not reduce the percentage of such tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FINANCE & TAXATION:

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