

By the Committee on Finance & Taxation and Representatives
Starks, Arnall, Fasano, Rojas, Jacobs, Silver, Hill, Dockery,
Gay, Futch, Thrasher, Flanagan, Burroughs, Bradley, King,
Melvin, Crist, Culp, Roberts-Burke, Feeney, Cosgrove,
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1 A bill to be entitled
2 An act relating to taxation; amending s.
3 199.143, F.S.; defining "residence" for
4 purposes of provisions which specify when the
5 nonrecurring intangible personal property tax
6 is paid when the property subject to the
7 mortgage, deed of trust, or other lien which
8 secures a line of credit is the borrower's
9 residence; amending s. 201.08, F.S., which
10 imposes the excise tax on documents on notes
11 and other obligations to pay money, and
12 mortgages and other evidences of indebtedness;
13 specifying the conditions under which a renewal
14 of a document is taxable under said section;
15 providing that taxability of a document shall
16 be determined solely from the face of the
17 document and separate documents expressly
18 incorporated therein; specifying application of
19 tax when multiple documents secure the same
20 primary debt; providing that no tax imposed
21 before the effective date of this act and not
22 actually collected on certain documents
23 exempted by this act shall be due with respect
24 to such documents; specifying status of
25 mortgages given by a taxpayer other than or in
26 addition to the taxpayer obligated on the
27 primary obligation or given to secure a
28 guaranty or surety on a primary note; amending
29 s. 201.09, F.S.; specifying conditions under
30 which a renewal note evidencing a revolving
31 obligation is exempt from said tax; creating s.

1 201.091, F.S.; providing that if a document is
2 not qualified for exemption as a renewal solely
3 because of nonpayment of tax on a prior
4 document, payment of the deficiency, interest,
5 and any penalty shall allow the document to
6 qualify for exemption; providing for
7 administration; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 199.143, Florida Statutes, is
12 amended to read:

13 199.143 Future advances.--

14 (1) Except as provided in subsection (3), if the
15 mortgage, deed of trust, or other lien is recorded or executed
16 after December 31, 1985, and secures a line of credit or
17 otherwise secures future advances, as provided in s. 697.04,
18 the nonrecurring tax shall initially be paid on the initial
19 obligation secured, excluding future advances. Each time an
20 additional amount is borrowed or a future advance is made,
21 additional nonrecurring tax shall be paid on the amount of the
22 advance. However, any increase in the amount of original
23 indebtedness caused by interest accruing under an adjustable
24 interest rate obligation having an initial interest rate
25 adjustment interval of not less than 6 months shall be taxable
26 as a future advance only to the extent such increase is a
27 computable sum certain when the original indebtedness is
28 incurred.

29 (2) The trustee, if a deed of trust, or the owner of
30 the obligation, if a mortgage or other lien, making the
31 advance shall pay the additional tax to the clerk to whom the

1 initial tax was paid. The clerk shall note the amount
2 received upon the instrument, if one has been recorded, or
3 shall otherwise give a receipt.

4 (3) If the property subject to the mortgage, deed of
5 trust, or other lien which secures a line of credit is a
6 residence of the borrower at the time the mortgage, deed of
7 trust, or other lien is created, then the nonrecurring tax
8 shall be paid as provided in s. 199.135 on the maximum amount
9 of the line of credit and no further nonrecurring tax shall be
10 due on any borrowing under the line of credit. As used in
11 this subsection, "residence" includes only a dwelling unit
12 that is a primary, secondary, or vacation home of the
13 borrower, who is a natural person, and that has been primarily
14 occupied for residential or recreational purposes at any time
15 during the immediately preceding 1-year period by the borrower
16 or by the borrower's spouse or children. The term excludes
17 any dwelling that is used primarily as a rental unit. Use by
18 a member of the borrower's immediate family for consideration
19 is deemed rental of the dwelling unit. Notwithstanding the
20 fact that a dwelling unit is held by a trustee, the dwelling
21 unit shall be considered a residence of the borrower and may
22 be used as security for a line of credit under this
23 subsection, as long as the dwelling unit is a residence of the
24 borrower, as defined in this subsection.

25 Section 2. (1) Subsections (5), (6), and (7) are
26 added to section 201.08, Florida Statutes, 1996 Supplement, to
27 read:

28 201.08 Tax on promissory or nonnegotiable notes,
29 written obligations to pay money, or assignments of wages or
30 other compensation; exception.--

31

1 (5) For purposes of this section, a renewal shall only
2 include modifications of an original document which change the
3 terms of the indebtedness evidenced by the original document
4 by adding one or more obligors, increasing the principal
5 balance, or changing the interest rate, maturity date, or
6 payment terms. Modifications to documents which do not modify
7 the terms of the indebtedness evidenced such as those given or
8 recorded to correct error; modify covenants, conditions, or
9 terms unrelated to the debt; sever a lien into separate liens;
10 provide for additional, substitute, or further security for
11 the indebtedness; consolidate indebtedness or collateral; add,
12 change, or delete guarantors; or which substitute a new
13 mortgagee or payee are not renewals and are not subject to tax
14 pursuant to this section. If the taxable amount of a mortgage
15 is limited by language contained in the mortgage or by the
16 application of rules limiting the tax base when there is
17 collateral in more than one state, then a modification which
18 changes such limitation or tax base shall be taxable only to
19 the extent of any increase in the limitation or tax base
20 attributable to such modification. This subsection shall not
21 be interpreted to exempt from taxation an original mortgage
22 which would otherwise be subject to tax pursuant to subsection
23 (1).

24 (6) Taxability of a document pursuant to this section
25 shall be determined solely from the face of the document and
26 any separate document expressly incorporated into the
27 document. Taxability of a document pursuant to this section
28 shall not be determined by reference to any separate document
29 referenced or forming part of the same contract or obligation
30 unless the separate document is expressly incorporated into
31 the document. When multiple documents evidence, secure, or

1 form part of the same primary debt, tax pursuant to this
2 section shall not be imposed more than once, on the total
3 indebtedness evidenced, notwithstanding the existence of
4 multiple documents.

5 (7) A mortgage, trust deed, or security agreement
6 filed or recorded in this state which is given by a taxpayer
7 different than or in addition to the taxpayer obligated upon
8 the primary note, certificate of indebtedness, or obligation,
9 or which is given to secure a guaranty or surety of a primary
10 note, certificate of indebtedness, or obligation, shall for
11 purposes of this section be deemed to evidence and secure the
12 primary note, certificate of indebtedness, or obligation, not
13 a separate obligation, and to the extent that tax is paid on
14 any document evidencing or securing the primary note,
15 certificate of indebtedness, or obligation, such tax shall be
16 paid once, notwithstanding that more than one mortgage, trust
17 deed, or security agreement is recorded with respect to such
18 note, certificate of indebtedness, or obligation.

19 (2) No tax imposed by s. 201.08, Florida Statutes,
20 before July 1, 1997, and not actually collected on documents
21 exempted by or otherwise not subject to tax pursuant to s.
22 201.08(6), Florida Statutes, as created by this act, shall be
23 due from any person with respect to such documents.

24 Section 3. Subsection (1) of section 201.09, Florida
25 Statutes, 1996 Supplement, as amended by chapter 96-395, Laws
26 of Florida, is amended to read:

27 201.09 Renewal of existing promissory notes and
28 mortgages; exemption.--

29 (1) When any promissory note is given in renewal of
30 any existing promissory note, which renewal note only extends
31 or continues the identical contractual obligations of the

1 original promissory note and evidences part or all of the
2 original indebtedness evidenced thereby, not including any
3 accumulated interest thereon and without enlargement in any
4 way of the original contract and obligation, such renewal note
5 shall not be subject to taxation under this chapter if such
6 renewal note has attached to it the original promissory note
7 with the proper notation thereon as required by s. 201.133.
8 In order to be exempt from taxation under this section, a
9 renewal note evidencing a term obligation shall not be
10 executed by any person other than the original obligor and
11 must renew and extend only the unpaid balance of the original
12 contract and obligation. In order to be exempt from taxation
13 under this section, a renewal note evidencing a revolving
14 obligation shall not be executed by any person other than the
15 original obligor and must renew and extend no more than the
16 original face amount of the original contract and obligation.

17 Section 4. Section 201.091, Florida Statutes, is
18 created to read:

19 201.091 Correction of prior error.--If the only reason
20 a document is not exempt from tax pursuant to s. 201.09 is the
21 nonpayment or underpayment of tax on the document evidencing
22 the original contract and obligation or the original primary
23 debt or mortgage, then payment of the tax deficiency plus
24 interest at the current statutory rate and penalty, if any, on
25 the prior document shall cause the renewal to qualify for the
26 exemption. The corrective payment described in this section
27 may be made on the original note, on the original mortgage, on
28 any subsequent mortgage modification, or in such other manner
29 as may be set forth in rules promulgated by the Department of
30 Revenue. The application of this section shall not be limited
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1 by expiration of any applicable statute of limitations on
2 assessment or collection of the omitted tax.

3 Section 5. This act shall take effect July 1, 1997.

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5 HOUSE SUMMARY

6
7 Defines "residence" for purposes of provisions which
8 specify that the nonrecurring intangible personal
9 property tax is paid on the maximum amount of a line of
10 credit when it is opened if the property subject to the
11 mortgage, deed of trust, or other lien which secures the
12 line is the borrower's residence.

13 Revises provisions which impose the documentary stamp tax
14 on notes and other obligations to pay money, and
15 mortgages and other evidences of indebtedness. Specifies
16 the conditions under which a renewal of a document is
17 taxable. Provides that taxability of a document shall be
18 determined solely from the face of the document and
19 separate documents expressly incorporated therein.
20 Specifies application of tax when multiple documents
21 secure the same primary debt. Provides that no tax
22 imposed before the effective date of the act and not
23 actually collected on certain documents exempted by the
24 act shall be due with respect to such documents.
25 Specifies status of mortgages given by a taxpayer other
26 than or in addition to the taxpayer obligated on the
27 primary obligation or given to secure a guaranty or
28 surety on a primary note. Specifies conditions under
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deficiency, interest, and any penalty shall allow the
document to qualify for exemption.

ADDITIONAL SPONSORS

Livingston, Ogles, Ritchie, Wise, Lacasa, Barreiro, Brown and
Valdes