

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.  
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9 Be It Enacted by the Legislature of the State of Florida:  
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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 title to a dwelling unit is held by a trustee, the  
21 dwelling unit shall be considered a residence of the borrower  
22 and may 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.--

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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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